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No. 1

## RAILROAD COEMPLOYMENT

MARGARET A. SCHAFFNER



MADISON WISCONSIN  
DECEMBER 1905





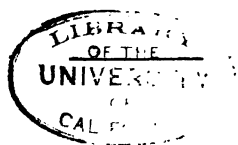
# RAILWAY COEMPLOYMENT

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MARGARET A. SCHAFFNER

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COMPARATIVE LEGISLATION BULLETIN—No 1—DECEMBER 1905



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A brief legal study for the U. S.

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A convenient compilation giving judicial decisions under the laws of the several states. Can be secured free.

- U. S.—LABOR, BUREAU OF. Present status of employers' liability in the U. S. by Stephen D. Fessenden. Bulletin, Nov. 1900, No. 31, p. 1157-1210.

A brief statement of the common and statute law on employers' liability in the U. S.

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Gives a summary of the laws of the principal foreign countries in tabular form.

## JUDICIAL DEFINITIONS

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### WHO ARE FELLOW-SERVANTS?

The question who are fellow-servants has been answered in a variety of judicial decisions which present widely conflicting opinions. No other subject known to our law has given occasion for such conflicting rulings. The decisions vary not only for different jurisdictions and for different historical periods but disagree to an extent which cannot be explained on the basis of general principles of law.

#### Definitions

A general uniformity of opinion is found in the following definitions:

*New York.* In 1862 the supreme court of New York decided, "Servants are 'fellow-servants' within the rule that the master is not liable for the injuries of the servant received through the negligence of a fellow-servant if they are in the employment of the same master, engaged in the same common enterprise, and are both employed to perform duties and services tending to accomplish the same general purpose, as maintaining and operating a railroad, operating a factory, working a mine, or erecting a building." *Wright v. N. Y. C. R. Co.*, 1862, 25 N. Y. 562.

*Vermont.* With respect to railway servants the supreme court of Vermont held that "all who are engaged in accomplishing the ultimate purpose in view—that is, the running of the road—must be regarded as engaged in the same general business, within the meaning of the rule." *Hard v. V. & C. R. Co.*, 1860, 32 Vt. 473.

*Illinois.* Recently the supreme court of Illinois decided that "the definition of fellow-servants is a question of law; whether a given case falls within that definition is a question of fact." *C. & A. R. Co. v. Swan*, 1898, 176 Ill. 424.

*Wisconsin.* Still more recently the supreme court of Wisconsin, in applying the Illinois doctrine, held that "Where there is no dispute as to the respective duties of servants employed by the same master, the question whether they are fellow-servants is for the court." *MacCarthy v. Whitcomb*, 1901, 110 Wis. 113.

### **Conflicting opinion**

From these definitions it would seem an easy matter to determine what constitutes common employment. The contrary is true.

*Field.* Justice Field, in *C. M. & St. P. Ry. Co. v. Ross*, 1884, 112 U. S. 377, says, "This question has caused much conflict of opinion between different courts and often much vacillation of opinion in the same court."

*Pollock.* Sir Frederick Pollock<sup>1</sup> points out that the term "common employment" is misleading because servants not "about the same kind of work" nor of the "same relative rank" are held to be coemployees.

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<sup>1</sup>Law of Torts, 7th ed., p. 97.

### Classification of Decisions

The decisions may be roughly classified along two general lines: those dealing with inequality of rank in service,—the vice principal rule,<sup>2</sup> and those relating to differences in work,—the departmental rule. However, neither the vice principal nor the departmental rule have uniform application. Pervading both of these rules runs the general doctrine of the assumption of risk.

### General Definition

The only approximate definition possible seems to be that,—for any given jurisdiction or any stated time, coemployment is that which the legislature and the courts have defined it to be under the given circumstances.<sup>3</sup>

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<sup>2</sup> A strict interpretation of the vice principal rule holds only those who stand as substitutes for the master in the performance of non-delegable duties as vice principals.

<sup>3</sup> For a summary of conflicting decisions on railway coemployment see American Digest, Cent. ed., *Master and Servant*.

## HISTORY

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The doctrine of common employment is of recent origin. The great body of the common law did not embody this principle until near the middle of the 19th century.<sup>1</sup>

### COMMON LAW LIABILITY PRIOR TO 1837

It is a general principle of law that the person by whose fault an injury is caused is legally responsible. A further principle is that a person is liable for the acts of his agents acting within the scope of their authority.

In England prior to 1837, the common law principles of employers' liability comprised: 1. The master's responsibility for his own wrongful acts. 2. His liability for the acts of his servants acting within the scope of their employment.

After 1837, it gradually became the rule in England and in the United States to exempt the employer from liability for the injury of a servant resulting from the negligence of a fellow-servant.

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<sup>1</sup> See,—Pollock, *Law of Torts*, 7th ed., p. 96. Also Justice Field, U. S. Supreme Court, 112 U. S. 386.



## DEVELOPMENT OF THE DOCTRINE

**Early cases**

1837. The basis of the rule of common employment is found in an English case, *Priestley v. Fowler*, 3 M. & W. 1.

The doctrine of railway coemployment was first distinctly announced in America.

1841. The first case in this country, *Murray v. S. C. Railroad Co.*, 1 McMulan 385, was decided by the supreme court of South Carolina which affirmed the fellow-servant rule.

1842. The supreme court of Massachusetts affirmed the doctrine in *Farwell v. Boston and Worcester Railroad Corporation*, 4 Met. 49. This case became the basis for future decisions in the United States and Sir Frederick Pollock<sup>1</sup> points out that it has had weight in influencing English decisions on the question.

1850. The first English case directly deciding the question of railway coemployment was *Hutchinson v. York, Newcastle, and Berwick Ry. Co.*, 5 Exch. R. 343. In this case the Court of Exchequer held that recovery could not be had for a servant of the company, who was on duty on one of its trains and was injured by a collision with another train of the same company, because he was a fellow-servant with those who caused the injury.

**Acceptance of the rule**

*England. United States.* From 1837 on a long line of judicial decisions established the coemployment rule in England and the United States.

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<sup>1</sup>Law of Torts, 7th ed., p. 96.

*The Continent.* On the Continent the doctrine did not become a permanent part of the law. Tendencies toward the development of the rule were checked by statutes declaratory of employers' liability, and later by the systems of industrial insurance more recently established.

#### STATUTORY MODIFICATION OF THE DOCTRINE

##### Statutes Prior to the Industrial Insurance Systems

*Germany.*<sup>1</sup> Before 1838 the principles of the Roman law held in North Germany and the employer was liable for the wrongful acts of his servants only if he was proven negligent in their selection. In 1838 Prussia enacted a railway law which made railway companies liable for injuries to passengers and others unless they could prove negligence on the part of the injured person or some occurrence beyond their control. In 1871 a similar law was enacted for the entire German Empire.

*France.* In 1841 it was decided that Art. 1384 of the French Civil Code made the employer liable to servants for injuries due to the negligence of fellow-servants.

*Italy. Belgium. Holland.* These countries know nothing of a doctrine of common employment.

*Norway.* - In 1854 Norway made railroad companies responsible for the acts of their officials.

*Switzerland.* Liability for compensation for death or bodily injury to servants was imposed on railways in 1875.

*Sweden.* In 1886 Sweden made railway companies

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<sup>1</sup> Compare, Clay, Abstract of the law of employers' liability . . . in Journal of the Society of comparative legislation, 1897.

liable to persons killed or injured in their service excepting in case of accidents due to the disobedience or gross negligence of the person injured.

*England.* In 1880, was passed the Employers' liability act. Lord Watson in *Smith v. Baker*, 1891, A. C. 325, said "The main, although not the sole object of the act of 1880, was to place masters who do not, upon the same footing of responsibility with those who do personally superintend their works and workmen, by making them answerable for the negligence of those persons to whom they intrust the duty of superintendence as if it were their own. In effecting that object the legislature has found it expedient in many instances to enact what were acknowledged principles of the common law."

*British colonies.* In Quebec the doctrine of common employment is unknown. The Canadian provinces and the Australian colonies have passed laws similar to the English act of 1880.

*United States.* Contemporary statutes for the several states are given under the heading Laws and Judicial Decisions.

### **Typical Industrial Insurance Systems<sup>1</sup>**

Industrial insurance acts providing compensation for injuries due to industrial accidents except those caused by serious or wilful misconduct on the part of the worker are in force in the following countries:

*Germany.* The compulsory insurance law of 1884, as amended in 1900, provides free medical treatment and a pension of  $66\frac{2}{3}\%$  of wage for either temporary or permanent incapacity and in case of fatal

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<sup>1</sup>See, *Workmen's insurance in Germany and abroad*, in *Guide to the workmen's insurance of the German Empire*, Berlin, 1904.

accidents gives a pension to the family up to 60% of the annual wage. The annual costs of the system are assessed on individual employers, according to wages and risks, by mutual associations of employers organized by industries, thus securing collective responsibility. The workmen contribute about 8% to the accident insurance fund. The whole system is administered by the state.

*Austria.* The law of 1887 and 1894 differs especially from the German in having territorial associations of employers and employees: the employers pay 90%, the workmen 10% of the costs of accident insurance.

*Norway.* Compulsory insurance was established in 1894. Employers pay premiums according to wages and risk. The state pays all expenses of central administrative office and one-half of expenses of local branches; also meets deficits.

*England.* The act of 1897 applies to accidents in the more dangerous occupations. Insurance is voluntary, and the costs are paid by the individual employer. Benefits are paid up to 50% of the wages in case of total disability and in case of death survivors receive three times the amount of the annual wage. Payment is guaranteed by a prior claim upon amounts due the employer from accident insurance companies.

*Denmark.* Established voluntary insurance in 1898. The costs are paid by individual employers, and compensation may be guaranteed either through state or private companies.

*France.* The French system of 1898 is voluntary except for seamen. The costs are paid by employers and payment is guaranteed either through state or private insurance companies.

*Italy.* The law of 1898 is compulsory. Otherwise it is similar to the French plan.

*Switzerland.* Compulsory accident insurance was established in 1899; 75% of premiums are paid by employers, 25% by employees. A state subsidy provides about one-fifth of the necessary funds.

## LAWS AND JUDICIAL DECISIONS

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The United States is the only country in which the doctrine of common employment continues to have great practical significance.

The relation of master and servant has passed from status to contract. The contract relation has been regulated first by common law, second by statutory provisions. The doctrine of common employment has been subject to these two forms of modification and the following pages give the salient points of laws and judicial decisions in the United States.

The fact that many states have deemed it necessary to enact general statutes giving right of action for injuries causing death, without providing for injuries not proving fatal, is explained by reason of the common law right which provided damages in case of injuries, from time immemorial while an action for damages on account of the homicide of a human being could not be maintained prior to Lord Campbell's Act in 1846. (9 and 10, Vict. c. 93.)

### **United States<sup>1</sup>**

The decisions of the federal courts on the doctrine of common employment have not been uniformly consistent.

Compare: *C. M. & St. P. R. Co. v. Ross*, 1884, 112 U. S. 377; and *N. E. R. Co. v. Conroy*, 1899, 175 U. S. 323.

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<sup>1</sup>With the exception of citations taken from advance sheets, all cases cited are given from the reports of the court deciding the question.

In 1892 in *B. & O. R. Co. v. Baugh*, 149 U. S. 368, the supreme court declared that the question as to who are fellow-servants was not a question of local law but rather one of general law, and that in the absence of statutory regulations by the state the federal courts were not required to follow the decisions of the state courts.

In deciding questions arising under the employers' liability acts of the several states, such statutory provisions have generally been accepted as establishing the rule for the federal courts sitting within the state. However, diversity of interpretation has resulted in frequent disagreement between state and federal decisions under the same law.

*Alabama.* Civ. Code, 1897, c. 43, sec. 1749. Makes employers liable for injury caused by the negligence of any superintendent; or by one in authority; or in obedience to rules or instructions; or by the negligence of any person in charge or control of any railroad signal, engine, switch, car, or train, upon a railway, or of any part of the track.

Liability can not be avoided by contract. *A. G. S. R. Co. v. Carroll*, 1892, 97 Ala. 126.

*Alaska.*

\* In *Gibson v. C. P. Nav. Co.*, 1902, 1 Alaska 407, the vice principal rule was applied.

*Arizona.* Civ. Code, 1901, sec. 2767. Corporations made liable for injury by fellow servants: previous notice of negligence to be given.

*Arkansas.* Dig. 1894, c. 130. Railroad companies made liable for acts of vice principals.

Authority must be actually entrusted to vice principal. *Hunter v. K. C. & M. Ry. & B. Co.*, 1898, 29 C. C. A. (U. S.) 206.

*California.* Civ. Code, 1885, sec. 1970, as amended

by Acts, 1903, c. 220. Relates to non delegable duties of employer.

In *McKune v. C. S. R. Co.*, 1885, 66 Cal. 302. A train dispatcher was held not a coemployee with a track laborer.

*Colorado.* Acts, 1901, c. 67. Employers made liable for injuries due to acts of fellow-servants.

*Connecticut.* Gen. St., 1902, sec. 4702. Default of the vice principal shall be the default of the master.

*Delaware.* Rev. Code, 1852, ed. 1893, c. 105. A general statute giving right of action for injuries.

A fireman of one train and the brakeman of another are fellow-servants. *Wheatley v. P. W. & B. R. Co.*, 1894, 1 Marv. (Del.) 305.

*Florida.* Rev. St., 1891, c. 4071, sec. 3. Railroad companies made liable for negligence of fellow-servants. Contracting out, illegal.

*Georgia.* Civ. Code, 1895, sec. 2323. Liability of railroad companies for injuries to employees.

If an employee is without fault the railroad is liable for the negligence of a coemployee, whether the injury is connected with the running of trains or not. *Ga. R. v. Ivey*, 1884, 73 Ga. 499.

*Idaho.* Codes, 1901, Civ. Pro. c. 126. A general statute giving right of action for injuries causing death.

A carpenter employed by a railroad is not a fellow servant of a train dispatcher. *Palmer v. U. & N. R. Co.*, 1887, 2 Id. 290.

*Illinois.* Ann. St., 1896, c. 70. A general statute giving right of action for injuries causing death.

The duty of a master to warn a servant of danger cannot be delegated to a fellow-servant so as to absolve the master from liability for injury resulting from failure to communicate the warning. (Judgment, 1903, 109 Ill. App. 494, reversed.) *Rogers v. C. C. C. & St. L. Ry. Co.*, 1904, 211 Ill. 126.

*Indiana.* Ann. St., 1901, sec. 7083. Railroad companies are made liable to employees for injury caused



by the negligence of any person to whose order or direction the injured employee was bound to conform; or by obedience to rules; or by the negligence of any person in charge of any signal, telegraph office, switch yard, shop, roundhouse, locomotive engine or train upon a railway; or where such injury was caused by the negligence of any coemployee, engaged in the same common service in any of the several departments, at the time, in that behalf, having authority to direct. Contracting out, illegal.

No constitutional objection to this act. *State v. Darlington*, 1899, 153 Ind. 1.

*Iowa*. Code, 1897, sec. 2071. Gives railway employees a right of action for injuries arising from the negligence of coemployees.

This statute is not unconstitutional, being applicable to all persons or corporations engaged in a peculiar business. *McAunich v. M. & M. R. Co.*, 1866, 20 Ia. 338.

To hold that the injury must have been caused by the actual movement of the cars, engines, or machinery, to come within the protection of the statute would be giving too narrow a construction to the words "in any manner connected with the use and operation of any railway." *Akerson v. C. B. & Q. Ry. Co.*, 1898, 106 Ia. 54.

*Kansas*. Laws, 1905, c. 341. Makes railroads liable for all injuries to employees in consequence of any negligence of any of their servants. This statute gives to employees of railroads the same right to recover for injuries that a non-employee would have under the common law.

*Kentucky*. St., 1894, c. 1. A general statute, giving right of action for injuries causing death.

*Louisiana*. Rev. Civ. Code, ed. 1887, art. 2320. A general provision making employers responsible for damage due to their servants.

*Maine*. Rev. St., 1903, c. 89. A general statute, right of action for injuries causing death.

*Maryland.* Code, 1903, art. 67. A general statute giving right of action for injuries causing death.

Art. 23. Provided for a coöperative insurance fund.

Declared unconstitutional, 1904, Court of Common Pleas of Baltimore.

*Massachusetts.* Rev. Laws, 1902, c. 106. Makes employers liable for injury to employees caused by negligence of superintendents; or by persons in charge or control of any signal, switch, locomotive engine, or train upon a railroad.

*Michigan.* Comp. Laws, 1897, sec. 6308. Makes railroad companies liable for injuries causing death.

A railroad company is not held to the same accountability toward an employee as toward a passenger. *Batterson v. C. & G. T. Ry. Co.*, 1884, 53 Mich. 125.

But it is due employees to protect them from unnecessary and unusual dangers. *Ragon v. T. A. A. & N. M. Ry. Co.*, 1892, 91 Mich. 379.

*Minnesota.* Gen. St., 1894, sec. 2701. Makes railroad corporations liable for damages to servants due to the negligence of other servants; does not apply to construction of new road.

Acts, 1895, c. 173. A common law enactment.

Acts, 1895, c. 324, sec. 1. In any action, where damages are awarded for injury by coemployee, the court, upon request of either party, shall direct the jury to name negligent fellow-servant.

The negligence of a fellow-servant constitutes no defense in an action by an employee to recover damages. *N. P. R. Co. v. Behling*, 1893, 12 C. C. A. (U. S.) 662.

The decision of the supreme court of Minnesota that the fellow-servant law of that state applies to a mining corporation which owns a short line of road to mine its ore is not so clearly beyond the limits of the police power of the state that it must be declared a violation of the constitution of the U. S. *Kibbe v. S. Iron Min. Co.*, 1905, 7 U. S. C. C. A., Minn.) 136 F. 147.

*Mississippi.* Const., 1890, art. 7, sec. 193. Makes

railroad companies liable for injuries to employees caused by the negligence of superiors; or by fellow-servants engaged in another department of labor, or on another train of cars, or about a different piece of work. Contracts waiving benefits, void.

*Missouri.* Rev. St., 1899, sec. 2873. Railroad corporations made liable for damages to servants engaged in the work of operating railroads by reason of the negligence of other employees.

A railroad section hand is within the protection of this act. *Overton v. C. R. I. & P. Ry. Co.*, 1905, (Mo. App.) 85 S. W. 503.

Laws, 1905, sec. 2864. Damages for injuries resulting in death are set at not less than two nor more than ten thousand dollars.

Laws, 1905, sec. 2876a. "Railroads" defined to include street and other railways.

*Montana.* Acts, 1905, c. 1. Railroad companies are made liable for all damages to employees due to neglect, or mismanagement, or wilful wrong, of other employees in any manner connected with the use and operation of any railroad on or about which they shall be employed. Contracting out illegal. Right of action survives.

*Nebraska.* Comp. St., 1901, c. 21. Gives general right of action for injuries causing death.

Track repairer and fireman, not fellow-servants. *U. P. Ry. Co. v. Erickson*, 1894, 41 Neb. 1.

Foreman of a section crew and an engineer, not fellow-servants. *O. & R. V. Ry. Co. v. Kraysenbuhl*, 1896, 48 Neb. 553.

*Nevada.* Comp. Laws, 1900, sec. 3983. A general statute, giving right of action for injuries causing death.

*New Hampshire.* Pub. St., 1891, c. 191. Gives right of action for injuries causing death.

A train dispatcher, not a fellow-servant of a brakeman. *Wallace v. B. & M. R.*, 1904, 72 N. H. 504.

*New Jersey.* Gen. St., 1895, p. 1188, sec. 10. A general statute, for injuries causing death.

A master cannot claim immunity upon the ground that he exercised due care in selecting mechanics but assumes the burthen of seeing that they actually exercise reasonable care and skill. *Collyer v. Pa. R. Co.*, 1886, 49 N. J. L. 59.

*New Mexico.* Comp. Laws, 1897, sec. 3216. Railroad companies made liable for injuries to employees due to lack of care in selecting or in overworking servants.

*New York.* Laws, 1902, c. 600. Imposes liability on employers for injuries to employees caused by the negligence of superintendents or of any person acting as such with the authority or consent of the employer.

The fact that there was a general superintendent who did not take immediate charge of the details of the work, over such foreman, did not relieve the master from liability for the latter's acts. *McBride v. N. Y. T. Co.*, 1905, 92 N. Y. S. 282.

All of the employees of a railway company engaged in operating either of two colliding trains were fellow-servants of a fireman on one of the trains. *Rosney v. E. R. Co.*, 1905, (U. S. C. C. A.) 135 Fed. 311.

*North Carolina.* Acts, 1897, c. 56. Makes railroad companies liable for acts of fellow-servants. Contracts waiving benefit of law, void.

Held constitutional. *Hancock v. N. & W. Ry. Co.*, 1899, 124 N. C. 222.

*North Dakota.* Acts, 1903, c. 131. Railroad companies made liable for negligence of coemployees. Contracting out, illegal.

*Ohio.* Ann. St., 3rd. ed., sec. 3365-22. Persons actually having the power to direct and control, to be held not fellow-servants but superiors; also persons having charge in any separate department.

An engineer on one train is in a separate department

from a brakeman on another train. *Railroad Co. v. Margrat*, 1894, 51 O. S. R. 130.

*Oklahoma.*

Decisions of the supreme court of U. S. treated as controlling upon the supreme court of Oklahoma. Cf. Report for 1904, 14 Okla. 422.

*Oregon.* Acts, 1903, p. 20, sec. 1. Makes railroad companies liable for injuries to employees when caused by any superior; or by any person having the right to direct the services either of the servant injured or of the negligent coemployee; or by any coemployee in another train of cars; or by any one having charge of any switch, signal point, or locomotive; or by any one charged with dispatching trains, or transmitting orders.

*Pennsylvania.* Digest, 1895, p. 1604, sec. 6. Provides that workmen who are not employees but are lawfully engaged about the premises of a railroad company shall have only such right of action for injuries as if they were employees.

Under this act any one not a passenger, who enters the depot of a railroad company takes the risk upon himself. *Gerard, Adm'r, v. Pa. R. Co.*, 1878, 12 Phil. R. 394.

*Porto Rico.* Rev. St., 1902. Employers made liable to employees for injuries due to the negligence of superintendents; or to any person in charge of any signal switch, locomotive engine, car, or train in motion.

*Rhode Island.* Gen. Laws, 1896, c. 233, sec. 14. A general statute giving right of action for injuries causing death.

*South Carolina.* Const. art. 9, sec. 15. Makes railroad companies liable for injuries to employees due to the negligence of a superior; or of a fellow-servant in another department.

Acts, 1903. No. 48. Benefit from railroad relief

departments not to bar an action for damages for injury caused by the negligence of the company or of its servants.

*South Dakota.* Civ. Code, 1903, sec. 1449 and 1450. An enactment of the common law.

*Tennessee.* Code, 1884, part 2, title 3. A general statute giving right of action for injuries causing death.

A conductor of a railway train acting in his official capacity is a vice principal. *A. G. S. R. Co. v. Baldwin*, 1904, 113 Tenn. 409.

*Texas.* Acts, 1897, c. 6. Railroad companies made liable for acts of fellow-servants causing injury to any employee while engaged in the work of operating cars, locomotives, or trains.

Hand cars are within the meaning of this section. *Long v. C. R. I. & T. Ry. Co.*, 1900, 94 Tex. 53.

Includes a logging railroad operated by a corporation solely for the purpose of carrying its own lumber. *Lodwick L. Co. v. Taylor*, 1905, (Tex. Civ. App.) 87 S. W. 358.

*Utah.* Rev. St., 1898, t. 36. The vice principal rule and the departmental rule applied.

A railroad yardman, not a fellow-servant with a foreman. *Armstrong v. O. S. L. & U. N. Ry. Co.*, 1893, 8 U. 420.

#### *Vermont.*

Conflicting decisions. See *Sawyer v. R. & B. R. Co.*, 1855, 27 Vt. 370. *Davis v. C. Vt. R. Co.*, 1882, 55 Vt. 84.

*Virginia.* Const., 1902, art. 12, sec. 162. Makes railroad companies liable to employees for negligence of servants as follows: employees engaged in the construction, repair, or maintenance of its track; or in any work in or upon a car or engine upon a track; or in the physical operation of a train, car, engine, or switch, or in any service requiring his presence upon the same; or in dispatching trains, or transmitting orders; or for the negligence of superintendents; or of coemployees in another department of labor.

Contracts waiving rights, void. Provisions not restrictive.

See also Acts, 1901-2, c. 322.

*Washington.* Acts, 1899, c. 35. Liability of railroads for safety appliances.

The negligence of such servants was the negligence of the master in making dangerous the place furnished the plaintiff in which to work. *Mullin v. N. P. Ry. Co.*, 1905, 80 P. 814.

*West Virginia.* Code, 1899, c. 103. Gives general right of action for injuries causing death.

Trainmen and yardmen are fellow-servants. *Beurhing's Adm'r. v. C. & O. Ry. Co.*, 1892, 37 W. Va. 502.

*Wisconsin.* Rev. St., 1898, sec. 1816, as amended by Laws, 1903, c. 448. Abrogates the fellow-servant doctrine with respect to railway employees who sustain injuries due to a "risk or hazard peculiar to the operation of railroads." The clause "peculiar to the operation thereof" has been rigidly construed so that the operation of the law is limited to a narrow scope.

*Wyoming.* Rev. St., 1899, sec. 2522. Contracts of employees waiving right to damages for injuries due to the negligence of other employees are void.

## JUDICIAL CRITICISMS

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The question of common employment has given rise to a variety of judicial criticism, some severe in denunciation, some commendatory of the doctrine.

### **Upholding the Rule**

*Massachusetts.* Chief Justice Shaw of the supreme court of Massachusetts in delivering the opinion in the first important case on the subject of railway co-employment, said "the general rule, resulting from considerations as well of justice as of policy, is, that he who engages in the employment of another for the performance of specific duties and services, for compensation, takes upon himself the natural and ordinary risks and perils incident to the performance of such services, and in legal presumption, the compensation is adjusted accordingly. And we are not aware of any principle which should except the perils arising from the carelessness and negligence of those who are in the same employment. These are perils which the servant is as likely to know, and against which he can as effectually guard, as the master. They are perils incident to the service, and which can be as distinctly foreseen and provided for in the rate of compensation as any others. To say that the master shall be responsible because the damage is caused by his agents, is assuming the very point which



remains to be proved." *Farwell v. Boston & Worcester R. Corporation*, 1842, 4 Met. 49.

*South Carolina.* In the case, *Murray v. S. C. R. Co.*, 1841, 1 McMullan (S. C.) 385, the first case on railway coemployment to be tried in this country, the court said "No case like the present has been found nor is there any precedent suited to the plaintiff's case . . . It seems to me it is on the part of the several agents a joint undertaking where each one stipulates for the performance of his several part. They are not liable to the company for the conduct of each other, nor is the company liable to one for the misconduct of another and as a general rule I would say that where there was no fault in the owner he would be liable only for wages to his servants."

*United States Supreme Court.* In the case of the *Baltimore & O. R. Co. v. Baugh*, 1893, 149 U. S. 368, Justice Brewer of the supreme court of the United States, said "But passing beyond the matter of authorities the question is essentially one of general law. It does not depend upon any statute; it does not spring from any local usage or custom; there is in it no rule of property but it rests upon those considerations of right and justice which have been gathered into the great body of the rules and principles known as the common law. There is no question as to the power of the states to legislate and change the rules of common law in this respect as in others but in the absence of such legislation the question is one determinable only by the principles of that law."

### **Adverse Criticism**

*Scotch case.* As an illustration of a contrary position taken in an early Scotch case may be cited Dick-

son v. Ranken, 1852, 14 Sc. Sess. Cas. 2d series 420. In referring to the contention of counsel that the doctrine ought to be adopted on account of its own inherent justice, the court said, "This last recommendation fails with me, because I think that the justice of the thing is exactly in the opposite direction. I have rarely come upon any principle that seems less reconcilable to legal reason. I can conceive some reasonings for exempting the employer from liability altogether, but not one for exempting him only when those who act for him injure one of themselves. It rather seems to me that these are the very persons who have the strongest claim upon him for reparation, because they incur danger on his account, and certainly are not understood, by our law, to come under any engagement to take these risks on themselves."

*Ohio.* In the case, *Little Miami R. Co. v. Stevens*, 1851, 20 Ohio 432, the court observed that the "employer would be more likely to be careless of the persons of those in his employ, since his own safety is not endangered by any accident, when he would understand that he was not pecuniarily liable for the careless conduct of his agents."

*United States Supreme Court.* In holding that a corporation should be held responsible for the acts of a servant exercising control and management, Justice Field said "He is in fact, and should be treated as, the personal representative of the corporation, for whose negligence it is responsible to subordinate servants. This view of his relation to the corporation seems to us a reasonable and just one, and it will insure more care in the selection of such agents, and thus give greater security to the servants engaged under him in an employment requiring the utmost

vigilance on their part, and prompt and unhesitating obedience to his orders." *C. M. & St. P. Ry. Co. v. Ross*, 1884, 112 U. S. 377.

*Connecticut.* In the case of *Ziegler v. Danbury & N. R. Co.*, 1885, 52 Conn. 543, the court stated, "The defense of common employment has little of reason or principle to support it and the tendency in nearly all jurisdictions is to limit rather than enlarge its range." It must be conceded that it cannot rest on reasons drawn from considerations of justice or public policy."

*Missouri.* The effect of changing economic conditions was dwelt upon by the court in the case, *Parker v. Hannibal & J. R. Co.*, 1891, 109 Mo. 362, as follows: "In the progress of society, and the general substitution of ideal and invisible masters and employers for the actual and visible ones of former times, in the forms of corporations engaged in varied, detached, and wide-spread operations . . . it has been seen and felt that the universal application of the rule (the rule in regard to fellow-service) often resulted in hardship and injustice. Accordingly, the tendency of the more modern authorities appears to be in the direction of such a modification and limitation of the rule as shall eventually devolve upon the employer, under these circumstances, a due and just share of the responsibility for the lives and limbs of the persons in its employ."

















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# LOBBYING

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MARGARET W. SCHAFFNER

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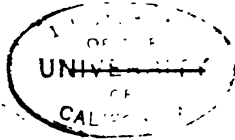
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## INTRODUCTION

The great agitation throughout the country on the subject of "Lobbying" has brought many demands from the people of this State and others for material collected in this department on this subject. This bulletin has been compiled to meet this demand. It is an impartial statement of existing legislation upon this subject.

CHARLES MCCARTHY  
*Legislative Reference Department*

# LOBBYING



**MARGARET A. SCHAFFNER**

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**COMPARATIVE LEGISLATION BULLETIN—No 2—JANUARY, 1906**

**Compiled with the co-operation of the Political Science Department of the University of Wisconsin**

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**WHEELER, G. J.** The practice of private bills with the standing orders of the House of Lords and House of Commons and rules as to the provisional orders. London, 1900.

Appendix gives text of Standing Orders.

**WHITNEY, TRAVIS H.** The need of legislative experts. Green bag, Sept. 1905. vol. 17, p. 78-82.

Shows need of counteracting the influence of private interests on legislation.



## KINDS OF LOBBYING

A general uniformity of opinion prevails in English and American jurisdictions on the subject of lobbying.

### Definitions

The following definitions are typical:

*Wisconsin.* "To lobby is for a person not belonging to the legislature to address or solicit members of the legislative body, in the lobby or elsewhere, away from the house, with a view to influencing their votes." C. V. & S. R. Co. v. C. St. P. M. & O. R. Co. 1889, 75 Wis. 224.

*United States.* "Lobby services are personal solicitations by persons supposed to have personal influence with members of Congress to procure the passage of a bill." *Trist v. Child*, 1874, 88 U. S. 441.

*New York.* "'Lobby services' are generally defined to mean the use of personal solicitation, the exercise of personal influence, and improper or corrupt methods, whereby legislative or official action is to be the product." *Dunham v. H. P. Co.* 1900, 56 N. Y. App. Div. 244.

**Legal versus illegal services**

*United States.* Numerous decisions of the United States supreme court point out the distinction between legal and illegal attempts to influence legislation.

In *Trist v. Child*, decided in 1874, Justice Swayne said: "Services which are intended to reach only the reason of those sought to be influenced rest on the same principles of ethics as professional services and are no more exceptionable. They include drafting the petition which sets forth the claim, attending to the taking of testimony, collecting facts, preparing arguments and submitting them orally or in writing to a committee, and other services of a like character; but such services are separated by a broad line of demarcation from personal solicitation, and though compensation can be recovered for them when they stand alone, yet when they are blended and confused with those which are forbidden, the whole is a unit and indivisible, and that which is bad destroys the good." 88 U. S. 441.

In another leading case the same court held "It is, however, the right of every citizen who is interested in any proposed legislation to employ a paid agent to collect evidence and facts to draft his bill and explain it to any committee or to any member thereof or of the legislature fairly and openly and ask to have it introduced; and contracts which do not provide for more and services which do not go farther, violate no principle of law or rule of public policy. (But it is necessary to disclose agency to prevent the contract from being illegal.)" *Marshall v. B. & O. R. Co.* 1853, 57 U. S. 314; and "contracts providing for compensation contingent upon success are void as against public policy," *Trist v. Child*, 1874, 88 U. S. 441.

**Methods of influencing legislation**

The methods of lobbying are as various as are the interests represented. The courts distinguish between secret lobbying and open advocacy but it is not always easy to place the ban upon illegitimate methods without interfering with those which result in improved legislation. It has been urged that forbidding lobbyists to discuss measures with members of the legislature will merely deter the better class of lobbyists and champions of worthy measures, while unprincipled ones would not be prosecuted for violating the law. Among laws recently secured through organized influence brought to bear upon legislators are those establishing juvenile courts, compulsory education, and similar measures. Again in some states where corruption has been most flagrant the visible lobby has largely disappeared, in one well known case the governor of the state acting as go-between for private interests demanding special privileges and legislators whose seats were controlled by means of campaign contributions. Another state illustrates the capacity of a United States senator acting as boss for his state to so control matters that a wink or a nod from one of his sub-lieutenants would secure any legislative favors desired by those supplying campaign funds. Inadequate as these illustrations are they suffice to show that the lobbying question involves more than mere prohibition of personal solicitation of legislators. Then again the influence of some of the most powerful lobbies for private as opposed to public interests is exercised along legitimate lines at least so far as to scorn bribery or other corrupting influences. The superior information and skill of many legislative agents and counsel enables them to convince by array of facts and figures so arranged as to seem to prove their case.

A half-truth is difficult to combat. It is this method of lobbying which is proving a real menace to public interests.

### **Doctrine of our courts**

In holding a contract for secret lobbying and personal solicitation illegal the United States supreme court declared that it was "aware of no case in English or American jurisprudence where such an agreement was not held to be illegal and void." *Trist v. Child*, 1874, 88 U. S. 441.

### **The real issue**

But the evils of lobbying are little affected by making lobby contracts illegal and void. Such contracts become subjects of litigation only where the system of lobbying is imperfectly organized. The real menace arises when principal and agent work harmoniously together against public interests for private ends.

## RULES, LAWS, AND JUDICIAL DECISIONS

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### **Foreign countries**

*England.* The evils of lobbying have been largely eliminated by the system of private bill practice developed in Parliament. The Standing Orders of the House of Commons and the House of Lords prescribe strict regulations for parliamentary agents and counsel representing private or local interests and subject private bills to a quasi-judicial procedure as follows:

All bills granting any corporate privileges or affecting private rights as those conferring powers on railways, tramways, electric lighting, gas, and water companies, etc. must be introduced on petition and not on motion. Notice of such bills must be given nearly three months before the meeting of parliament and copies must be deposited in the Private Bill Office of the Commons. Memorials from opponents are also deposited and after preliminary investigation to insure conformity to the Standing Orders and to secure full notice by advertisement to all persons interested, the petition is presented to the Commons.

After the second reading the bill is referred to a committee: if a railway or canal bill, to a standing

committee for those matters, otherwise to a committee of four members and a referee.

The committee grant hearings and take evidence from promoters and opponents. Witnesses are examined under oath and every clause of the bill is given a quasi-judicial consideration.

After the return of the bill to the house its subsequent stages are similar to those of a public bill.

Every private bill must be in charge of some recognized parliamentary agent and no written or printed statement regarding any bill may be circulated in the house of Commons unless signed by some such agent who holds himself responsible for its accuracy.

Every agent must be registered, must give bond, and agree to abide by the Standing Orders of Parliament. He must also have a certificate from some member of parliament or of the bar and for any breach of requirements he may be suspended or prohibited from further practice.<sup>1</sup>

*British Colonies.* With certain modifications, the English system of private bill practice in parliament is followed in Canada<sup>2</sup> and in the Australian commonwealth.<sup>3</sup>

*The Continent.* On the continent the question of lobbying has not as yet become so serious a matter as in England and in the United States. The reasons for this differ for the various countries. A partial explanation may be found in the fact that in some states

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<sup>1</sup> See Standing Orders House of Commons relative to private business 1—249, and Standing Orders House of Lords 69—148. London, 1900.

<sup>2</sup> See Bourinot, *Parliamentary procedure and practice . . . in Canada*.

<sup>3</sup> See Australia. *The annotated constitution of the Australian commonwealth* by Quick and Garran.

the government has a dominant influence in legislation and privileges are still distributed as favors; in others the legislative bodies and the government combined carefully investigate all applications for special privileges affecting private interests and subject franchises and grants to careful scrutiny and regulation; in still others quasi-public utilities are owned by the state and the rental of public property does not yield great private incomes.

### United States

( In *Marshall v. B. & O. R. Co.* decided in 1853, the supreme court held that all persons whose interests may in any way be affected by any public or private act of a legislature have an undoubted right to urge their claims and argument either in person or by counsel professing to act for them before legislative committees as well as in courts of justice, but a hired agent assuming to act in a different character is practicing deceit on the legislature...and services involving the use of secret means or the exercise of sinister or personal influences upon legislators are illegal. 57 U. S. 314. )

Act of Congress, June 11, 1864, prohibits members of Congress from receiving compensation for services before a department.

*Alabama.* Const. 1875, art. 4, sec. 42. Corrupt solicitation of legislators punished by fine and imprisonment.

*Arizona.* Pen. Code, 1901, sec. 93. Obtaining or seeking to obtain money upon a representation of improperly influencing legislative action made a felony.

In such cases no person is excused from testifying on ground of self incrimination, but testimony not used against such person except for perjury.

*Arkansas.*<sup>1</sup>

*California.* Const. 1879, art. 4, sec. 35. Lobbying is declared a felony.

The term "lobbying" signifies to address or solicit members of a legislative body with the purpose of influencing their votes. *Colusa Co. v. Welch*, 1898, 122 Cal. 428.

Though the contract contemplates the use of personal solicitation, yet if no personal influence is brought to bear upon the members, and no dishonest, secret, or unfair means employed, to accomplish the object, it is not illegal. *Foltz v. Cogswell*, 1890, 86 Cal. 542.

The board of supervisors of a county have no authority to employ special counsel for the purpose of influencing members of the legislature with respect to pending legislation affecting the county. *Colusa Co. v. Welch*, 1898, 122 Cal. 428.

*Colorado.* Rules of Legislature, 1905. Senate Rule 31 and House Rule 27. Privileges of floor extended only to state, legislative, and judicial officers, congressmen, ex-members, reporters, and other persons specially invited. In the Senate the president or any senator may invite. In the House notice of desired privilege must be in writing and consent of house had: no suspension of this rule. While either house is in committee of the whole privileges of floor extend only to state officers; others admitted within the bar; in the senate, employees are not to carry the card or name of any person to any senator. Attempting to influence the vote of any member during a session shall subject the offender, if an officer, to removal from office, if a visitor to forfeiture of all privileges.

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<sup>1</sup>See Arkansas under *Prior notice of bills*. p. 27.



*Connecticut.* Gen. St. 1902, sec. 1261. Attempt to improperly influence legislation punished with fine or imprisonment or both. Entertainment of legislators, improper influence.

*Delaware.*<sup>1</sup>

*District of Columbia.*

All contracts for services in procuring legislation are void from public policy. *Weed v. Black*, 1875, 2 McArth. 268.

*Florida.*<sup>2</sup>

*Georgia.* Const. 1877, art. 1, sec. 2, par. 5. Lobbying is declared to be a crime.

Code, 1895, sec. 3668. Lobby contracts void, as against public policy.

*Idaho.*<sup>3</sup>

*Illinois.* Rules of Legislature, 1905. Senate Rule 60 and House Rule 5. Admission to floor, unless by special permission, granted only to state, legislative, and judicial officers, ex-members, ex-state officers, and reporters. The House rule also includes members of the constitutional convention and congressmen, while the Senate specifically excludes ex-members interested in pending legislation.

*Indiana.* Rules of Legislature, 1905. Senate Rule 38. Exclude all but members, officers, and ticket holders. House Rule 77. No person except state,

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<sup>1</sup>See Delaware under *Subject and title of laws*, p. 26.

<sup>2</sup>See Florida under *Prior notice of bills*, p. 27.

<sup>3</sup>See Idaho under *Subject and title of laws*, p. 26.

legislative, and judicial officers admitted unless by consent of speaker.

*Iowa.* Rules of Legislature, 1906, Senate Rule 33. Admission to floor granted only to state, legislative, and judicial officers, ex-members and ex-state officers. Exceptions made upon special permission of the President or of a member. No person is permitted to come upon the floor of the Senate or into cloak rooms to solicit or influence senators in their official action. Officers or employees soliciting or endeavoring to influence members of the legislature are to be dismissed. House Rule 66. Also permits admission to the floor for the families of members and gives each member the right to admit a friend.

*Kansas.*

A contract for services as an attorney before a legislative body is valid, but for lobby services is void, as against public policy. *McBratney v. Chandler*, 1879, 22 Kan. 692.

*Kentucky.* St. 1899, sec. 1993. Any person who attempts by corrupt means to influence the vote of a legislator, to be guilty of a misdemeanor: fine or imprisonment or both.

*Louisiana.*

Any agreement which contemplates the use of private influence to secure legislation is void. *Burney's Heirs v. Ludeling*, 1894, 47 La. Ann. 73.

*Maine.* Rules of Legislature, 1905. Senate Rule 34 and House Rule 16. Prohibit members of legislature from acting as counsel before committees. House Rule 24. Persons not members, except state officers, etc. are admitted within hall only upon invitation by some member.

*Maryland.* Laws, 1900, c. 328. Requires legislative counsel or agents to register and to file written authorization from persons for whom they are to act, persons employing counsel to make sworn statement of expenses; legislative dockets to be kept by secretary of state. The governor may require sworn statement of expenses for any particular bill. The law does not apply to municipalities. Penalty for violating provisions of law, fine or fine and disbarment from acting as legislative counsel or agent, for three years.

Rules of Legislature, 1905. Senate Rule 55 and House Rule 5. Persons not members admitted within the bar of the two houses only upon invitation. Exception made for executive and judicial officers, ex-members, etc.

*Massachusetts.* Rev. Laws, 1902, c. 3, secs. 23-32. The main provisions are as follows: Any person, corporation, or association employing legislative agents or counsel are to enter the names of such counsel or agents upon dockets kept by the sergeant-at-arms. Employer and employee are both made responsible for entering names within one week after agreement but either party may enter fact of termination of employment. Two dockets are to be kept: the one for counsel, employed to appear at public hearings of committees or to advise in relation to legislation; the other for agents acting to influence legislation. The dockets are to contain the name and business address of the employer, the name, residence, and occupation of the person employed, the date and length of employment, and the special subjects of legislation to which the employment relates. Additional entries are to be made

as new subjects arise, so that the entries shall show all subjects of legislation in relation to which agents or counsel are employed. No legislative committee is to allow any person to appear before it as counsel who is not duly registered. Legislative counsel shall not act as agent unless also entered upon the agent's docket. Written authorization to act is to be filed, and compensation for services is not to be contingent upon success. Within thirty days after final adjournment of the legislature the sergeant-at-arms is to deposit dockets with the secretary of the commonwealth and employers are to file sworn statements of expenses in such form as the secretary may prescribe; such statements to be open to public inspection. Penalty for violation of act on part of employer, not less than one hundred nor more than one thousand dollars; on part of agent, in addition to fine, disbarment from acting for three years. Act does not apply to city or town solicitors.

*Michigan.*

Keeping open house for the entertainment of legislators does not constitute bribery. *Randall v. E. N. A.* 1893, 97 Mich. 136.

*Minnesota.* Rev. Laws, 1905, c. 99, sec. 2. Corrupt solicitation of legislators made punishable by fine imprisonment or both.

*Mississippi.*<sup>1</sup>

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<sup>1</sup> See Mississippi under *Prohibition of log-rolling*, p. 26.

*Missouri.*<sup>1</sup> Rules of Legislature, 1905. Senate Rule 53, and House Rule 86. Unless invited by the Senate or the House, no persons except state, legislative, and judicial officers, and congressmen are permitted upon the floor. House also admits ex-members of legislature.

*Montana.* Pen. Code, 1895, sec. 172. Any person obtaining or seeking to obtain anything of value on representation of influencing legislation improperly, guilty of felony. Not excused from testifying on ground of self incrimination. Testimony not used against such person except for perjury.

*Nebraska.* Rules of Legislature, 1905. Senate Rule 43. No person admitted to floor except state, legislative, and judicial officers, and congressman. House Rule 11. Privileges of floor extended to state officers, etc. and such other persons as the House may admit.

*Nevada.* Rules of Legislature, 1905. Senate Rule 49 and House Rule 57. Admission to floor, except on invitation by some member, granted only to legislators, state officers, and in the House, ladies. A majority in either house may authorize the presiding officer to clear the floor of all such persons.

*New Hampshire.* Const. 1792, part 2, art. 7. Members of legislature not to take fees or act as counsel in any cause before legislature.

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<sup>1</sup>At the last legislative session Governor Folk issued an order requiring lobbyists to register at the executive office upon coming to the capitol and also on leaving; to state the object of their visit to the governor and to the press; and to leave the city within a limit of thirty hours. Fear of inquiry into their methods led to compliance.

*New Jersey.* Legislature of 1905 adopted an anti-lobby resolution and appointed a special committee to investigate lobbying.

*New Mexico.*<sup>1</sup>

*New York.*

It is allowable to employ counsel to appear before a legislative committee or the legislature itself to advocate or oppose a measure in which the individual has an interest. *Lyon v. Mitchell*, 1867, 36 N. Y. 241.

But a contract for lobby services, for personal influence with members of the legislature is illegal and void. *McKee v. Cheney*, 1876, 52 How. Pr. (N. Y.) 144.

Rules of Legislature, 1906, Senate Rule 49 and House Rule 30. Admission to the floor granted only to legislators, and state officers, their clerks, deputies, etc. and reporters. The Senate also grants admission by card to ladies or to members of families of senators and of presiding officer; while the House grants further admission either upon the permission of the speaker or by vote of the House. The House excludes reporters interested in legislation, or receiving compensation from any corporation for influencing legislation.

*North Carolina.*<sup>2</sup>

*North Dakota.* Rules of Legislature, 1905. Senate Rule 37 and House Rule 44. Admission within the bar permitted only for state, legislative, and judicial officers, congressmen, ex-members of congress or legislature, members of the constitutional convention

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<sup>1</sup>See territories of the United States under *Special legislation*, p. 27.

<sup>2</sup>See *North Carolina* under *Prior notice of bills*, p. 27.

and federal officers of the state. Exceptions made in the Senate by vote and in the House on permission of speaker. Any person lobbying in the House, to forfeit privileges of floor.

### *Ohio.*

Asking other members of the legislature to support bills, collecting and presenting facts and reasons to them, and making arguments to induce them to support the bills, constitute "official duty" and "action" within the statute making it a crime for a legislator to solicit from any person any valuable or beneficial thing to influence him with respect to his official duty or to influence his action in a matter pending before him. *State v. Geyer*, 1896, 3 Ohio N. P. 242.

Rules of Legislature, 1904, Joint Rule 23. Visitors admitted may include: ex-members, state, legislative, and judicial officers, congressmen, governors of other states, clergymen by invitation of presiding officer, and persons invited by any member of the general assembly. Reporters may be admitted within the bar.

### *Oklahoma.*

A contract contingent upon legislative action but not stipulating for any act by either party other than a presentation of an ordinance to the city council containing the provisions desired, is not void as against public policy. *Baumhoff v. Okla. City Elec. & Gas & P. Co.* 1904, 14 Okla. 127.

*Oregon.* Cr. Code, 1902, sec. 1894. Lobbying with members of legislature, without disclosing interest, declared to be a crime.

The sole purpose and effect of this section was to make lobbying under the circumstances herein described criminal. It does not render contracts valid made to secure lobbying services if they were made under such circumstances that the lobbyist could not be punished criminally. *Sweeney v. McLeod*, 1887, 15 Ore. 330.

*Pennsylvania.* Const. 1873, sec. 78. Corrupt solicitation of legislators punished by fine and imprisonment.

sec. 79. Person charged with corrupt solicitation not excused from testifying on ground of self incrimination; such testimony not to be used against person except for perjury.

Rules of Legislature, 1905. Senate Rule 28. No person admitted to floor during sessions, unless invited by a member, except state and legislative officers, ex-members, and stenographers, House Rule 43. Persons admitted to floor include state officers, etc. and others specially introduced by a member by permission of the Speaker.

*Rhode Island.* Const. 1842, art. 4, sec. 4. Legislators shall not take fees or be of counsel in any case before either house, under penalty of forfeiting seat.

*South Carolina.*<sup>1</sup>

*South Dakota.* Rules of Legislature, 1905. Senate Rule 8, and House Rule 47. Admission within the bar permitted only to state, legislative, and judicial officers, ex-members, etc. and reporters. Exceptions made in the Senate on permission of the President and in the House by vote.

*Tennessee.* Acts, 1897, c. 117. Declares lobbying to be a felony.

*Texas.*<sup>2</sup>

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<sup>1</sup>See South Carolina under *Prior notice of bills*, p. 27.

<sup>2</sup>See Texas under *Prior notice of bills*, p. 27.



*Utah.* Rev. St. 1898, sec. 4102. Any person hiring to influence legislation improperly, guilty of felony.

*Vermont.* Const. 1793, c. 2, sec. 19. Prohibits representatives from acting as counsel or taking fee for advocating bill.

A contract for the employment of personal influence or solicitation to procure the passage of a public or private law is void. *Powers v. Skinner*, 1861, 34 Vt. 274.

*Virginia.* Code, 1904, sec. 3746. Paying or receiving compensation for securing legislation punished with imprisonment and fine.

This section intended to apply in the line of bribery and corruption and not for professional services, such as drafting petitions, setting forth client's claim, taking testimony, collecting facts, preparing arguments, oral or written, addresses to the legislature or its committee, with intention to reach its reason by argument. *Yates v. Robertson*, 1885, 80 Va. 475.

sec. 3748. Not to apply to any person having permission of legislative committee to appear before it.

*Washington.* Const. 1889, sec. 62. Corrupt solicitation of legislators punished by fine and imprisonment. Testimony may not be withheld on ground of self incrimination, but not used against person testifying except for perjury.

*West Virginia.* Acts, 1897, c. 14. Provides for the exclusion of lobbyists from the floor of either house of the legislature while in session.

*Wisconsin.* Rev. St. 1898, sec. 4482. Giving or receiving, or offering to give or receive services to influence legislation for compensation contingent upon success; or failing to disclose interest in bill when

seeking to influence legislative action made punishable by fine or imprisonment. (Laws of Wisconsin, 1858, c. 145, secs. 1, 2)

Laws, 1899, c. 243. The main provisions of the law are as follows:

sec. 1. Persons employed to act as counsel or agent to promote or oppose any legislation affecting the pecuniary interests of any individual, association, or corporation as distinct from those of the whole people of the state are to be registered within one week after employment. Employer and employee both responsible for entering name of counsel or agent upon legislative docket; either may enter fact of termination of employment.

sec. 2. The secretary of state is to keep two dockets: the one for legislative counsel before committees, to contain the names of counsel or persons employed to appear at public hearings before committees of the legislature for the purpose of making arguments or examining witnesses and also the names of any regular legal counsel who act or advise in relation to legislation; the other for legislative agents employed in connection with any legislation included within the terms of sec. 1. The dockets are to be public records, open to the inspection of any citizen, and are to contain the names of employers and of counsel and agents, with addresses, occupation, date and length of employment, and the subjects of legislation to which the employment relates.

sec. 3. It is the duty of persons employing counsel or agents to make additional entries whenever further subjects of legislation arise, specifically referring to

the petitions, orders, bills, etc. so that the dockets shall show all the subjects of legislation in relation to which any counsel or agent is employed. All agents and counsel are to be registered before acting. Employment for compensation contingent upon success not permitted. Legislative counsel not also entered on the agents' docket are limited to appearing before committees and to giving legal advice.

sec. 4. Counsel and agents are to file written authorization to act.

sec. 5. Within thirty days after final adjournment of the legislature, every person, corporation, or association employing legislative agents or counsel shall file a sworn statement of expenses with the secretary of state.

sec. 6. Penalty for violation by employers, not less than two hundred nor more than five thousand dollars; for violation by agents or counsel not less than one hundred nor more than one thousand dollars and disbarment from acting for three years.

sec. 7. Municipalities and other public corporations, exempt.

Laws, 1905, c. 472. Makes it unlawful for any legislative counsel or agent to attempt to influence any legislator personally and directly otherwise than by appearing before the regular committees, or by newspaper publications, or by public addresses, or by written or printed statements, arguments, or briefs delivered to each member of the legislature; provided that twenty-five copies be first deposited with the secretary of state. State and federal officers and employees, having pecuniary interests in any measure are likewise

prohibited from attempting to influence legislators otherwise than is permitted to legislative counsel and agents. Admission to floor of either house prohibited for legislative counsel or agents except upon invitation of such house. Penalty for violation of act, fine and imprisonment. Counsel or agents of municipalities, exempt.

Rules of Legislature for 1907. Admission to floor of the two houses granted only to state, legislative, and judicial officers, regents of educational institutions, congressmen, ex-members of the legislature, not engaged in defeating or promoting any pending legislation, all editors of newspapers within the state, and reporters for the press, who confine themselves to their professional duties, and such other persons as the presiding officer upon the order of the house may invite.

*Wyoming.* Const. 1889, art. 3, sec. 45. Corrupt solicitation of legislators made punishable by fine and imprisonment.

## REMEDIES

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The leading provisions so far enacted may be roughly grouped under: 1. restrictions on legislators; 2. limitations upon legislative procedure; 3. restraining devices; 4. positive remedies.

### **Restrictions on legislators**

*Bribery.* Under the common law bribery was always a crime. In certain jurisdictions it has been made a felony.

Compare laws of Ala. Ark. Col. Fla. La. Md. N. Y. Pa. W. Va.

Acceptance of railway passes and similar favors by legislators is unlawful in a number of states.

Compare laws of Fla. Ky. Mo. Wash. Wis.

*Acting as counsel.* Provisions prohibiting legislators from acting as counsel in any cause before the legislature were embodied in constitutions of American states before the end of the 18th century.

See N. H. Const. 1872, part 2, art. 7, and Vt. Const. 1793, c. 2, sec. 19.

*Not to vote, if interested.* Requiring legislators to abstain from voting upon bills in which they have a

private interest was early an acknowledged principle of parliamentary usage.

For constitutional provisions compare Pa. Const. 1875, sec. 80, and Tex. Const. 1875, art. 3, sec. 22.

*Prohibition of log-rolling.* Constitutional and statutory provisions against log-rolling have been adopted in a number of states. The following illustrations are typical:

Arizona. Pen. Code, 1901, sec. 92. Makes log-rolling punishable with imprisonment, forfeiture of office and disfranchisement.

Minnesota. Rev. Laws, 1905, ch. 99, sec. 3. Makes log-rolling punishable with imprisonment or fine or both.

Mississippi. Const. 1890, sec. 40. Requires legislators to take oath not to engage in log-rolling.

Utah. Rev. St. 1898, sec. 4096. Declares log-rolling a felony.

Also compare constitutional provisions of Col. Mont. N. D. and Wy. declaring log-rolling to be bribery.

### Limitations upon legislative procedure

*Subject and title of laws.* The provisions found in a majority of our states that each law shall embrace but one subject to be expressed in the title points to a time, not yet entirely passed, when special privileges and franchises were smuggled through legislatures under cover of innocent titles and when log-rolling was more openly practiced than at present.

Purpose of this provision, to prevent log-rolling. *People v. Collins*, 1854, 3 Mich. 343.

And to prevent surprise and fraud upon legislature. *State ex rel. v. Ranson*, 1880, 73 Mo. 78.

Design was to prevent the uniting of various objects in one bill for the purpose of combining various pecuniary interests in support of the whole. *Conner v. Mayor, etc.* 1851, 5 N. Y. 285.

Purpose is to prevent fraud and deception by concealment. *Astor v. A. Ry. Co.* 1889, 113 N. Y. 93.

Also compare constitutional provisions of Del. Const. 1897, art. 6, sec. 16; and Id. Const. 1889, art. 3.

*Special legislation.* Provisions prohibiting special legislation where general law is applicable have been adopted with few exceptions by our states.

The purpose was to exclude corruption and favoritism. *Nelson v. McArthur*, 1878, 38 Mich. 204.

Compare constitutional provisions of the several states; and act of Congress, July 30, 1886, prohibiting the passage of local or special laws in territories of the U. S.

*Appropriation bills.* Several states require that appropriation bills be passed a stated number of days before the close of the session.

The power to veto separate items of such bills was conferred on the governors of many of our states to arrest log-rolling.

Compare constitutional provisions of Ala. Ill. La. Mo. Neb. N. Y. Pa. Tex. Wash. Wy.

Holding up appropriation bills still offers a strong means of offense for professional lobbyists.

*Prior notice of bills.* Requiring public notice prior to the introduction of private bills is a further limitation on legislative procedure at least partially effective against lobbying.

Compare Constitutional provisions of Ala. Ark. Fla. La. N. C. Pa. S. C. Tex. Va. also the opinion of the supreme court of New Hampshire to House of Representatives, 1885, 63 N. H. 625, holding c. 2, sec. 1, N. H. Gen Laws, requiring a term of notice for private bills, unconstitutional.

For prohibitions against introducing new bills during the last days of the session see constitutional provisions of La. Mich.<sup>1</sup> Wash. and the following decisions:

The people in a free country have a right to notice of proposed legislation and an opportunity to express their assent or dissent. *Att'y Gen. v. Rice*, 1887, 64 Mich. 385.

When the journal shows that the original bill was used for purposes of substitution and that the substitute was for

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<sup>1</sup>The Michigan provision, Const. 1850, art. 4, sec. 28, limiting the introduction of new bills to the first fifty days of session was repealed in 1904.

a different purpose, the act is void. *Att'y Gen. v. P. R. Co.* 1893, 97 Mich. 589.

*Effect of limitations.* As to how far these limitations have served to regulate lobbying is a mooted question. As a general thing they have been effective to some degree, but certain authorities hold that the restrictions on special and local legislation have merely resulted in an undesirable modification of our general laws for special ends, and that requirements for published notice have been of little avail against secret manipulation of bills serving private ends.

*Legislative power.* The legislature has no power to bind a future legislature as to the mode in which it shall exercise its constitutional rights.

See *De Bolt v. O. L. I. T. Co.* 1853, 1 Ohio St. 563; *Brightman v. Kirner*, 1867, 22 Wis. 54; and *Mix v. I. C. R. Co.* 1886, 116 Ill. 502.

Since each legislature may determine its own rules of procedure, restrictions imposed by one may be repealed by the next. To preclude the possibility of easy repeal many of the restrictions enumerated have been embodied as constitutional provisions.

In the absence of constitutional restrictions, it remains with each legislative body to determine the limits of its own regulation.

### **Restraining devices**

*Registration.* The provisions for registration in Massachusetts, Maryland and Wisconsin are somewhat similar. They include: registration of legislative counsel and agents, the keeping of dockets by the secretary of state, the requirement to register for each particu-



lar measure, the filing of written authorization to act and the statement of expenses. Municipalities and minor political units are exempt. Penalties for violation vary but include fine or disbarment from acting or both.

Compare *Mass. Rev. Laws*, 1902, c. 3, sec. 23-32; *Md. Laws*, 1900, c. 328; *Wis. Laws*, 1899, c. 243.

*Prohibition of secret lobbying.* Attempting to influence members of the legislature other than by appearance before committees is forbidden by c. 472, *Laws of Wisconsin*, 1905.

*Exclusion from floor.* Provisions excluding legislative agents and counsel from the privileges of the floor except under certain conditions have in some cases been enacted into law, but more generally they form part of the rules of legislatures.

Compare *Wis. Laws*, 1905, c. 472; *Rules of Legislature of Col.* Ill. Ind. Me. Md. and Neb. for 1905; N. Y. and Ohio, 1906; and proposed rules for Wis. 1907.

### Positive remedies

Methods employed by some of our states to enable legislators to get at the facts of any question with dispatch include the following provisions:

*Publicity of committee proceedings.* The development of the committee system resulted in the withdrawal of many important phases of legislative action from direct public scrutiny. Among the measures employed to overcome this disadvantage are: publicity in the proceedings of committees with publication of all hearings granted to private parties, prior notice of such hearings to give all interested an opportunity to hear

or be heard either in person or by counsel, publication in permanent form of the evidence and findings.

*Evidence as to facts.* A quasi-judicial procedure thrown about private bill legislation in England has enabled parliament to secure accurate information on bills affecting private interests. Evidence is taken from promoters and opponents, witnesses are examined under oath, and careful consideration given every point brought before the private bill committees.

Compare Va. Const. 1902, sec. 51, providing for a joint legislative committee on special, private, and local legislation.

*Agencies for securing information.* The average legislator is a busy man. Intent upon doing his public duty he is often confronted with hundreds of bills during a single session. He must vote yes or no with little time for consideration. His greatest demand is for accurate impartial data giving all the facts in the case. The lobbyist gives him but one side. The public whose interests are at stake are too frequently indifferent.

Various agencies for getting at the facts are being developed by different legislatures. In some states the permanent state commissions, bureaus, and departments collect valuable data in convenient form for legislative reference: in others special investigating committees such as the Armstrong insurance committee of New York have secured valuable evidence as a basis for legislative action: in New York, Wisconsin, and California legislative reference departments have been established for the collection of data bearing on

the legislation of other states; for the compilation of laws on particular subjects; and for securing knowledge of the results of laws along lines upon which the legislature must pass judgment.







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Vol. 2

# CORRUPT PRACTICES AT ELECTIONS

Contributions and Expenditures

MARGARET A. SCHAEFER

MADISON, WISCONSIN  
FEBRUARY, 1901

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The present agitation over campaign expenditures and also campaign contributions, by insurance companies has made necessary this brief digest of legislation upon this subject.

CHARLES MCCARTHY,  
*Librarian Legislative Reference Department.*



# **CORRUPT PRACTICES AT ELECTIONS**

**CONTRIBUTIONS AND EXPENDITURES**

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**MARGARET A. SCHAFFNER**

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**COMPARATIVE LEGISLATION BULLETIN—NO 3—FEBRUARY 1906**  
Compiled with the co-operation of the Political Science Department of the University of Wisconsin

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**LEFÈVRE-PONTALIS, ANTONIN.** Les élections en Europe a la fin du 19e siècle. Paris, 1902.

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Includes analysis of English corrupt practices acts. Statistics given in appendix.

## LIMITATIONS ON CONTRIBUTIONS AND EXPENDITURES

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### WHAT ARE CORRUPT PRACTICES

#### Definitions

*England.* Under the British statute<sup>1</sup> corrupt practices at elections include: 1. bribery; 2. treating; 3. undue influence; 4. personation, and aiding, abetting, counselling, and procuring the commission of the offense of personation; 5. knowingly making a false declaration as to election expenses.

The English law also defines and provides penalties for illegal practices and illegal payments.

*United States.* The definitions for corrupt practices vary for the several states.

A typical definition is found in the Connecticut law of 1905, c. 280, sec. 11, which designates the following acts as corrupt practices: bribery; solicitation of candidates for campaign contributions, except by political committees; contributing campaign funds to others than to authorized treasurers or political agents; offering to procure office or appointment for another in order to influence his vote; making or receiving campaign contributions under assumed name.

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<sup>1</sup>Corrupt and illegal practices prevention acts, 1883 (46 and 47 Vict. c. 51) and 1895 (58 and 59 Vict. c. 40).

The California law of 1893, c. 16, and the Minnesota law of 1895, c. 277, also give extended definitions of corrupt practices.

#### CORRUPT CONTRIBUTIONS AND EXPENDITURES

Within recent years the legislatures of nearly a score of our states have placed limitations upon the irresponsible disposition of money in elections, and have sought to separate corrupt contributions and expenditures from those that are lawful.

#### **Expenditures**

In some of the states lawful expenditures are enumerated in the statutes and all others are expressly forbidden.

*Minnesota.* Thus the Minnesota law of 1895, c. 277, limits legal expenditures to the following: 1. for the personal traveling expenses of the candidate, 2. for the rent of hall or rooms for the delivery of speeches relative to principles or candidates in any pending election, and for the renting of chairs and other furniture properly necessary to fit such halls, or rooms for use for such purposes; 3. for the payment of public speakers and musicians at public meetings and their necessary traveling expenses; 4. printing and distribution of lists of candidates or sample tickets, speeches or addresses by pamphlets, newspapers or circulars, relative to candidates, political issues or principles, cards, handbills, posters or announcements; 5. for challengers at the polls at elections; 6. for copying and classifying of poll lists; 7. for making canvasses of voters; 8. for postage, telegraph, telephone or other public messenger service; 9. for clerk hire at the head-

quarters or office of such committee; 10. for conveying infirm or disabled voters to and from the polls.

*Connecticut.* The Connecticut law of 1905, c. 280, sec. 5, enumerates the expenses which may be lawfully incurred by treasurers of committees and by political agents as follows: (a) for hiring public halls and music for conventions, public meetings, and public primaries, and for advertising the same; (b) for printing and circulating political newspapers, pamphlets, and books; (c) for printing and distributing ballots and pasters; (d) for renting rooms to be used by political committees; (e) for compensating clerks and other persons employed in committee rooms and at the polls; (f) for traveling expenses of political agents, committees, and public speakers; (g) for necessary postage, telegrams, telephones, printing, express, and conveyance charges. Expenses not specially authorized are not to be incurred.

### **Contributions**

Provisions against contributions from certain specified sources present a further attempt to limit and regulate campaign funds. The prohibition of corporate contributions for political purposes is found in a number of states. Among other restrictions in force are those against the political assessment of public officers and employees, and the solicitation of candidates.

### **PURPOSE OF LIMITATIONS**

#### **Common law regulation**

In a decision given in 1762 Lord Mansfield points out that "Bribery at elections for members of parliament must undoubtedly have always been a crime at common law and consequently punishable by indict-

ment or information." *Rex. v. Pitt* and *Rex v. Mead*,  
3 Burr. 1335.

### **Statutory provisions**

But while the common law was able to check direct and open bribery, statutory limitations have become necessary in order to make the law effective against the more subtle and insidious methods of corruption.



## LAWS AND JUDICIAL DECISIONS

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### Foreign countries

*England.* Corrupt and illegal practices prevention acts, 1883 (46 and 47 Vict. c. 51) and 1895 (58 and 59 Vict. c. 40) The English law provides penalties for false personation at the polls, repeating, intimidation, undue influence, and bribery of voters. It restricts the employment of paid agents, clerks, messengers, etc. by candidates or election committees within narrow limits. It prescribes a fixed scale of lawful expenditures by candidates and committees and requires a full account of such expenditures.

*Canada.* Rev. St. 1886, c. 8, 9, 10, and Dominion elections act, 1900 (63-64 Vict. c. 12) The main provisions of the British act are adapted to Canadian conditions.

*Austria-Hungary.* The Austrian Penal Code punishes corrupt practices at elections by imprisonment. The Hungarian Electoral Law of 1874 deals similarly with corrupt practices but is less effective.

*Belgium.* The Code Electoral makes corrupt practices punishable by fine or imprisonment or both, and deprives any person who has bribed or been bribed of his electoral rights for from five to ten years.

*France.* The French Penal Code makes corrupt election practices offenses at law and punishes every attempt at bribery by imprisonment of from three months to two years or by a fine ranging from fifty to five hundred francs or by both penalties.

*Germany.* The Criminal Code makes the purchase or the sale of an electoral vote punishable by imprisonment with loss of civil rights.

*Italy.* A permanent election commission of the Chamber of Deputies is provided for which in accordance with the rules of the Chambers and of the Penal Code makes inquiry into cases of suspected corrupt practices.

*Sweden.* The Fundamental Law, 1809, makes persons convicted of corrupt election practices ineligible to the Diet. The law further provides imprisonment at hard labor for offenders; corruption is practically unknown.

*Norway.* Corrupt practices at elections are made punishable by the Criminal Law, and candidates are disqualified upon conviction.

### **United States**

Congress has power to control federal elections and to provide punishments for offences.<sup>1</sup>

Act of Congress, Aug. 15, 1876, c. 287, sec. 6, forbids executive officers or employees of the United

Compare: *ex parte* Siebold, 1879, 100 U. S. 371; *ex parte* Clarke, 1879, 100 U. S. 399; *ex parte* Yarbrough, 1883, 110 U. S. 651; *James v. Bowman*, 1903, 190 U. S. 127.

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<sup>1</sup>Bills are now (Feb. 1906) pending in Congress providing for publicity of campaign contributions and expenditures in federal elections; and also for prohibiting contributions by corporations chartered by the United States or engaged in interstate commerce.

States from requesting, giving to, or receiving from any other officer or employee of the government any money or other thing of value for political purposes.

Act is constitutional. *Ex parte Curtis*, 1882, 106 U. S. 371.

*Alabama.* Cr. Code, 1896, secs. 4191, 4694. Penalty for giving away liquor at elections, fine and imprisonment; for bribing voters, fine and imprisonment or hard labor.

Laws, 1899, p. 126. Punishes bribery at primary elections and makes candidate guilty of bribing ineligible for office.

*Arizona.* Laws, 1895, c. 20. Requires candidates and committees to file sworn, itemized statement of receipts and expenditures. Failure to file made a misdemeanor and on part of candidate also causes forfeiture of office. Punishes bribery by fine or imprisonment or both. Betting on elections made a misdemeanor.

*Arkansas.* Laws, 1891, c. 30, sec. 39. Bribery at elections made a felony.

Laws, 1897, c. 35. Prohibits giving away intoxicating liquors on primary election days.

*California.* Laws, 1893, c. 16. Requires candidates and committees to file sworn, itemized statements of receipts and expenditures, showing in detail all the money contributed or received with the name of each donor or subscriber or the source from which money was derived together with the names of persons to whom money was paid, the specific nature of each item, by whom the service was performed, and the purpose for which the money was expended. Refusal to file causes forfeiture of office. Only candidates or com-

mittees are permitted to expend money. Legitimate expenses are defined and the amount that can be expended is limited according to compensation attached to office. Bribery of electors is made punishable by imprisonment of not less than one nor more than seven years. Betting and treating are punishable as misdemeanors.

Laws, 1895, c. 185. Requires independent candidates to conform to the same requirements as party nominees.

Laws, 1905, c. 479. Giving or receiving or offering to give or receive anything of value in order to influence any voter at any election made punishable by imprisonment of not less than one nor more than seven years.

*Colorado.* Gen. Laws, 1877, p. 381. Giving away liquor on election day punishable by fine or imprisonment or both.

Laws, 1891, c. 167. Requires candidates and committees to file statement of expenses incurred in aid of election. Statements are to be made under oath and are to show in detail all sums of money received, from whom received, and to whom and for what purpose money was paid. Failure to file statement made a misdemeanor and on part of candidate also causes forfeiture of office. Bribery of voters is made a felony and betting a misdemeanor.

*Connecticut.* Laws, 1877, c. 146, sec. 43. Betting on elections is punishable by fine.

Laws, 1895, c. 69. Paying naturalization fees for others is prohibited.

Laws, 1905, c. 280. Requires candidates, political agents, and treasurers of political committees to file

sworn, itemized statements of receipts, expenditures, and outstanding obligations. No person other than a treasurer or political agent is permitted to pay any election expenses except that candidates may pay their own expenses for postage, telegrams, telephones, stationery, printing, express, and traveling. Candidates who have not expended anything for their election are to certify to that fact. Failure to file statement by candidate is punishable by a fine of \$25 for every day he is in default unless excused by the court.

Expenditures which may be incurred by treasurers of committees or by political agents are enumerated and corrupt contributions and expenditures are defined.

Inquiry into corrupt practices may be instituted by any elector upon giving bonds for prosecution. Trials are to be conducted before two judges without a jury and a unanimous decision is necessary for conviction. Any candidate found guilty of corrupt practices is rendered ineligible for public office for four years but he is not held responsible for corrupt acts of his agents unless done with his sanction or connivance. Penalty for violation of the act is a fine not exceeding \$1,000 or imprisonment for not more than one year or both.

*Delaware.* Const. 1897, art. 5, sec. 7. Bribery of electors punishable by fine or imprisonment or both and by disfranchisement for ten years. Betting on elections, a misdemeanor. Testimony may not be withheld on ground of self incrimination except by person accused, but such testimony is not to be used against person testifying except for perjury.

*Florida.* Laws, 1898, c. 24. Prohibits the use of money by corporations to secure candidacy or election of any person or for any other political purpose.

Laws, 1903, c. 85. Unlawful to give liquor on election day.

*Georgia.* Pen. Code, 1895, sec. 629. Any person in any way concerned in buying or selling a vote at any election, guilty of a misdemeanor.

Laws, 1904, p. 97. Extends penalty to offenses at primary elections.

*Idaho.* Pen. Code, 1901, secs. 4576, 4578, 4581. Bribing electors or betting on elections, misdemeanors. Giving away liquor on election day, prohibited.

*Illinois.* Rev. St. 1899, c. 46, secs. 83, 85. Any person soliciting or receiving money, liquor, or any other thing of value either to influence his vote or to procure the vote of another is guilty of bribery and upon conviction is to be sentenced to disfranchisement for not less than five nor more than fifteen years and to jail not less than three months nor more than one year, and to pay costs of prosecution and stand committed until paid. For second offense, to be forever disfranchised in the state, imprisoned in jail not less than a year and to stand committed until costs of prosecution are paid. Any person thus disfranchised, offering to vote shall on conviction be confined in penitentiary for not less than one nor more than ten years. Any person bribing or promising to bribe is not liable to punishment but shall be compelled to testify in prosecutions. Betting on election punishable by fine or imprisonment or both.

Act is constitutional. *Christy v. People*, 1903, 206 Ill. 337.

*Indiana.* Rev. St. 1901, sec. 2194. Giving away liquor on election days punishable by fine and imprisonment.

Sec. 6339y. Candidates for county, township, city, or municipal office, voted for at any convention or primary are required to file itemized statements of expenses with the county or city clerk. Failure to file is punishable by fine, from \$50 to \$500, by disfranchisement, and ineligibility to public office for a definite period.

Laws, 1905, c. 158. Bribery at elections is punishable by fine not to exceed \$50 and by disfranchisement and disqualification for holding office for ten years.

Laws, 1905, c. 169. Penalty for betting upon elections, fine, or fine and imprisonment.

*Iowa.* Laws, 1895, c. 59. Bribery at elections punishable by fine or imprisonment or both.

*Kansas.*<sup>1</sup> Laws, 1893, c. 77. Prohibits the use of money or other valuable thing to influence voters or to reward services at polls, also prohibits treating.

*Kentucky.* St. 1899, secs. 1575, 1586-87. Bribery at elections excludes offender from office and suffrage. Also adds fine as punishment for receiving and fine or imprisonment or both for giving bribe. Furnishing liquor on election day, a misdemeanor.

Laws, 1900, c. 12. Unlawful for corporations to contribute to campaign funds.

*Louisiana.* Laws, 1890, c. 78. Bribery at elections punishable by fine and imprisonment at hard labor.

*Maine.* Rev. St. 1903, c. 6, secs. 95, 97. Bribery and corruption at elections made punishable by fine and imprisonment and ineligibility to any office for ten

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<sup>1</sup>Laws, 1903, c. 230. Repeals Gen. St. 1901, secs. 2734-42, requiring itemized statement of expenditures in political campaigns.

years. Betting on elections punishable by forfeiture of wager to the town.

*Maryland.* Code, 1904, art. 33, secs. 88, 112. Attempting to influence any voter by bribery or reward or offer or promise thereof, punishable by imprisonment. Betting upon elections punishable by fine.

*Massachusetts.* Rev. Laws, 1902, c. 11, as amended by Laws, 1903, c. 318, and 1904, c. 375, 380. Candidates and committees are required to file sworn statements of expenses. Payments by candidates are limited to contributions to political committees and for personal expenses which may include payments for traveling, writing, printing, the transmission of letters, circulars, and messages, and for similar purposes. The statements filed by committees and by others handling funds are to set forth in detail all receipts, expenditures, disbursements and outstanding obligations: if the accounts of any committee do not exceed \$20 that fact shall be certified. Committees and others handling funds are prohibited from paying naturalization fees. Complaint of violation of the law may be made either by the proper official or by five registered voters. Proceedings for enforcement are to be brought by the attorney general or by the proper district attorney. Penalty for violation of law, a fine of not more than \$1,000, or imprisonment not exceeding a year. Penalty for bribing voters, imprisonment limited to one year.

*Michigan.*<sup>1</sup> Comp. Laws, 1897, secs. 11437-69. Bribery at elections is punishable by fine or imprison-

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<sup>1</sup>Laws, 1901, c. 61. Repeals sec. 3654 of Comp. Laws, 1897 (Laws, 1891, c. 190) requiring candidates and election committees to report expenditures under oath.



ment or both. Giving away liquor or betting on elections made misdemeanors. Legitimate expenses include the cost of printing and advertising, holding public meetings and procuring speakers, obtaining and distributing papers and tickets, and bringing voters to the polls.

*Minnesota.* St. 1894, sec. 120. Prohibits giving away liquor on election day.

Laws, 1895, c. 139. Sections of the general election law making bribery a misdemeanor are applied to village elections.

Laws, 1895, c. 277. Bribing or furnishing funds for bribery at elections is made a felony; punishable by fine of \$500 with costs and by imprisonment of not more than five years. Seeking or receiving a bribe is made a misdemeanor. Treating and entertaining are forbidden. Legal expenditures include payments for public speakers and musicians, the personal traveling expenses of candidates, the rent of halls, the cost of printing, postage, telegraph, and other messenger service, the hire of clerks, challengers and canvassers, and the use of carriages to convey infirm or disabled voters to and from the polls. Contributions of candidates are limited according to the number of voters, and candidates and committees are required to file sworn statements of expenses. Failure to file on part of committees is made a misdemeanor, while the filing of the statement by candidates is a pre-requisite for holding office or receiving salary and failure to file is punishable by a fine limited to \$1,000. Actions for violation of the law may be brought at any time during the term of office. The act does not apply to village, township, or school district elections.

*Mississippi.* Ann. Code, 1892, secs. 1597, 3275. Penalty for treating or bribing voters, fine and imprisonment.

*Missouri.* Laws, 1893, p. 157. Requires a statement of receipts and expenditures to be filed by committees and candidates. Failure causes forfeiture of office. Defines legitimate expenses, limits the amount that can be expended according to the number of voters, prohibits treating by candidates and provides punishment for bribery and betting.

Laws, 1897, p. 108. Prohibits use of corporation funds for political or campaign purposes, and places penalties on employers for bribing employees.

*Montana.* Pen. Code, 1895, secs. 74-111. It is made a misdemeanor to furnish money at elections for any purpose except for holding public meetings, for printing and circulating ballots, handbills, and other papers. Solicitation of and payments by candidates, forbidden. Expenses of candidates are limited and candidates and committees are required to file sworn, itemized statements of expenditures. Penalty for violation, fine and imprisonment. Betting on elections or giving away refreshments with purpose of influencing an elector are made misdemeanors. Bribery is punishable by fine and imprisonment. If it is proven before any court for the trial of election contests or petitions that any corrupt practice has been committed by or with the actual knowledge and consent of any candidate elected, his election is void.

Laws, 1905, c. 99. Extends penalties of the general election law to offenses at primaries.

*Nebraska.* Comp. St. 1903, secs. 2103-06. Pro-

hibits use of corporation funds for political or campaign purposes.

secs. 3426-48. Requires candidates and political committees to file sworn, itemized statements of expenditures. Candidates' expenses are limited according to the number of voters. Contributions to defray expenses of naturalization are prohibited. Treating, entertainment, and other expenditures not expressly permitted by law are made misdemeanors.

secs. 4234, 7891. Betting on elections punishable by fine. Liquor not to be given away on election days.

Laws, 1905, c. 66. Bribery, a misdemeanor punishable by fine, from \$100 to \$500, or by imprisonment not exceeding a year, or both, in the discretion of the court.

*Nevada*.<sup>1</sup> Comp. Laws, 1900, secs. 1606, 1672-75. Betting on elections or giving away liquor on election days made misdemeanors. It is made a felony to offer a bribe, or to furnish or procure entertainment, or to convey persons to polls, or to furnish any money or property to promote elections except for the expense of holding public meetings or printing and circulating ballots, handbills, and other papers.

*New Hampshire*. Pub. St. 1901, c. 39, secs. 10-13, 20. Using liquor to influence voters punishable by fine. Offering reward or contributing money or any other valuable thing to influence persons in voting punishable by fine or imprisonment. Fine, divided between prosecutor and the county. Inquest in case of alleged bribery to be made by any justice of the peace or police judge upon written complaint of five voters.

<sup>1</sup>Laws, 1899, c. 108. Repeals law, 1895, c. 103, requiring candidates and election committees to file statements of expenses.

*New Jersey.* Gen. St. 1895, p. 1317, 1370. Betting on elections prohibited. Bribing voters punishable by fine or imprisonment or both.

Laws, 1896, c. 173. Made unlawful to solicit money from or to sell tickets, etc. to candidates.

*New Mexico.* Comp. Laws, 1897, sec. 1636, 1662. Penalty for bribery of voters, fine and imprisonment and exclusion forever from franchise or office.

*New York.* Laws, 1890, c. 94, and 1892, c. 693. Every candidate is required to file sworn, itemized statements of expenses showing in detail all sums of money contributed or expended by him directly or indirectly or by others in his behalf. Penalty for violation imprisonment not exceeding a year and forfeiture of office. Assessment of officers for political purposes made a misdemeanor.

Laws, 1895, c. 155. Any person excepting authorized representative of political party soliciting money from a candidate or seeking to induce him to purchase tickets, etc. is guilty of a misdemeanor.

Laws, 1895, c. 885. Made a misdemeanor to furnish money or entertainment to induce attendance at polls but expenses for conveying electors to polls, for furnishing music, or for rent of halls, or for printing and circulating handbills, books, and other papers are lawful.

Laws, 1896, c. 112, amended by Laws, 1904, c. 205. Unlawful to give away liquor within specified distances of voting places while polls are open.

Laws, 1900, c. 70. Is made a misdemeanor to solicit money or other property from candidates for newspaper support.

Laws, 1899, c. 302, as amended by Laws, 1900, c. 737. Upon the advice of the governor the attorney

general is to assign deputies to act as counsel for the state superintendent of elections and to take charge of prosecutions for crimes against the elective franchise. Extraordinary terms of court may be called if necessary.

Laws, 1905, c. 625. Bribery at elections is made a felony punishable by imprisonment not exceeding five years; giving a bribe also disqualifies for holding office and receiving a bribe disfranchises for five years.

*North Carolina.*<sup>1</sup> Laws, 1895, c. 159. Bribery, betting, treating, or giving away liquor on election days made misdemeanors.

*North Dakota.* Rev. Codes, 1899, secs. 6855-60, 6890. Bribery at elections made punishable by fine or imprisonment or both, also by disfranchisement. It is made a misdemeanor to bet upon elections or to contribute money to promote the election of any candidate except for expenses of holding public meetings and for the printing and circulating of handbills, and other papers.

*Ohio.*<sup>2</sup> Anno. and Rev. St. 1900, secs. 2966-48-49-51, 6339, 6448, 6948, 7039-42. Bribery at elections punishable by fine or imprisonment or both; giving a bribe also forfeits office on part of offender and receiving a bribe excludes from suffrage for five years. Betting on elections or giving away liquor punishable by fine or imprisonment. Any candidate at a primary election paying or promising a bribe to any elector becomes ineligible for office and disquali-

<sup>1</sup>Laws, 1897, c. 185. Repeals provision of 1895 requiring candidates to file statement of election expenses.

<sup>2</sup>Laws, 1902, p. 77. Repeals Rev. St. 1900, sec. 3022, subd. 1-24 (Law, 1896, p. 123) requiring candidates and committees to file statements of election expenses.

fied for voting or being nominated at such election or convention.

Laws, 1904, p. 107. Provides penalties for bribery at primary elections.

*Oklahoma.* Rev. and Anno. St. 1903, secs. 1977-82, 2010. Bribery at elections made punishable by fine or imprisonment or both, also disfranchises offender. Betting upon elections or furnishing money for elections either on the part of candidates or of others to promote the election of any person made a misdemeanor. Use of money permitted for expenses of holding public meetings and for printing and circulating ballots, handbills, and other papers.

*Oregon.* Const. 1859, art. 2, sec. 7. The giving or offering of a bribe by a candidate causes forfeiture of office.

Codes and St. 1901, secs. 1900-01. Penalty for bribery at elections, imprisonment; for giving away liquor, fine or imprisonment or both.

*Pennsylvania.* Const. 1874, art. 7, sec. 1. Officials before entering upon duty are required to swear that they have not contributed or promised to contribute either directly or indirectly any valuable thing to procure their nomination or election or appointment except for expenses expressly authorized by law.

art. 8, sec. 8, 9. Bribery causes forfeiture of right to vote and forever disqualifies for holding office.

Laws, 1817, p. 204. Betting on elections, a misdemeanor.

Laws, 1874, p. 64. Contributions by candidates except for specified purposes are prohibited.

This act excepts out every direct and indirect purchase of the vote or influence of an elector, and every act for any

corrupt purpose whatever, incident to an election. *Commonwealth v. Walter*, 1877, 86 Pa. 15.

The statute, however, does not prohibit the employment of friends to canvas the district on behalf of a candidate, and to secure the return of delegates or the casting of votes for him; such services are a good consideration for a promise to pay for them. *Williams v. Commonwealth*, 1879, 91 Pa. 493.

Laws, 1881, p. 70. Penalty for bribery at nominating conventions or primary elections, fine and imprisonment.

Laws, 1883, p. 96. Assessment of public officers by campaign committees punishable by a fine not to exceed \$100.

Laws, 1887, p. 113. Furnishing liquor on election day, a misdemeanor.

Laws, 1889, p. 16. Bribery at elections made a misdemeanor; punishable by fine not over \$1,000 and imprisonment limited to one year.

Laws, 1897, p. 275. Assessment of public officers for political purposes by heads of departments punishable by fine limited to \$1,000 or by imprisonment not exceeding a year, or by both in the discretion of the court.

Laws, 1897, p. 276. Payment of poll tax for other persons except on written order, a misdemeanor.

Laws, 1906, No. 6. Prohibits municipal officers or employees in cities of the first class from soliciting or contributing funds for political purposes. Penalty, a fine limited to \$500 and forfeiture of office.

Laws, 1906, No. —.<sup>1</sup> Requires candidates and treasurers of political committees to file sworn statements of nomination and election expenses if the amount exceeds \$50. All expenditures of political committees must pass through the hands of the treas-

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<sup>1</sup>Approved by the Governor, Mar. 5. Not yet published.

urer. Legal expenditures are limited to the following purposes: 1. for printing and traveling and incidental personal expenses, stationery, advertising, postage, express, freight, telegraph, telephone and public messenger services; 2. for dissemination of public information; 3. for political meetings, demonstrations and conventions and for the pay of speakers; 4. for renting and furnishing offices; 5. for the payment of clerks, janitors, messengers, etc. actually employed; 6. for election watchers; 7. for taking voters to and from the polls; 8. for bona fide legal expenses. Contributions for political purposes by corporations are forbidden. Filing of statement is a pre-requisite for entering upon office and any five electors may institute an inquiry into the accounts filed by candidates or committees. Any violation of the act is punishable by fine ranging from \$50 to \$1,000 or by imprisonment from one month to two years or both at the discretion of the court.

*Rhode Island.* Gen. Laws, 1896, c. 14. Penalty for bribing voters, fine or imprisonment or both.

*South Carolina.* Cr. Code, 1902, secs. 271-4. Betting on elections, a misdemeanor. Bribery punishable by fine and imprisonment.

Laws, 1904, no. 231. Treating within a mile of a voting precinct on election days made punishable by fine or imprisonment with labor.

*South Dakota.* Pen. Code, 1901, secs. 7510, 7545-54. Furnishing money for elections except for expense of holding public meetings and of printing and circulating ballots, handbills, and other papers, a misdemeanor. Bribery at elections made an infamous crime punishable by imprisonment, forfeiture of office,



and disfranchisement for five years. Giving away liquor or betting upon elections, misdemeanors.

*Tennessee.* Laws, 1897, c. 14. Prohibits bribes either before or after election.

Laws, 1897, c. 18. Use of corporation funds for political or campaign purposes, unlawful.

*Texas.* Const. 1876, art. 16, sec. 1. Requires every legislator and state officer before entering upon his duty to swear or affirm that he has not directly or indirectly paid or promised to pay anything as a reward for the giving or withholding a vote at the election at which he was elected.

Sec. 5. Bribery to secure election disqualifies.

Laws, 1905, c. 11. Managers of headquarters, clerks and agents and others handling funds or using influence for any political party or for any candidate are required to file sworn, itemized statements of receipts and expenditures, showing in detail the source of the funds or support received and the purposes for which they were employed and whether there is reason to suspect that any person furnishing funds or influence was acting for or in the interest of any corporation. Candidates are also required to file sworn, itemized statements of expenses including amounts paid to newspapers, hotels, and for traveling. Failure to file, a misdemeanor punishable by a fine of not less than \$200 nor more than \$500 and in the discretion of the court, by a sentence to work on the roads not less than thirty days nor more than one year.

Bribery, whether under the guise of a wager or otherwise, is made a felony; also disqualifies for office. Giving away liquor on election days, a misdemeanor. Paying the poll tax of another except as permitted by

law is a felony punishable by imprisonment for not less than two nor more than five years. Advancing money to another for paying poll tax, or giving or receiving a consideration for a poll tax receipt made misdemeanors. Issuing a poll tax receipt to a fictitious person is punishable by imprisonment of from three to five years. Assessment of public officers or employees for political purposes made a misdemeanor.

Political advertising is to be labeled as such and to be paid for at regular rates; the penalty for violation is a fine of not less than \$500 nor more than \$1,000 and imprisonment in jail or work on the roads not exceeding thirty days.

Contributions by corporations for political purposes are prohibited; if made with the connivance of its president, financial agent, or treasurer, corporation is to forfeit its charter.

*Utah.*<sup>1</sup> Laws, 1890, c. 35. Giving away liquor on election days, a misdemeanor.

Laws, 1896, c. 56. Bribery at elections punishable by fine or imprisonment or both. Betting on elections, a misdemeanor.

*Vermont.* St. 1894, secs. 5113-14. Provides penalties for bribery and for giving away liquor at elections.

Laws, 1903, c. 6. Prohibits payment or promise of money to secure nomination except for personal, traveling, printing, and incidental expenses.

*Virginia.* Code, 1904, secs. 144b, 145a, 3824, 3847, 3853. Expenditures by candidates or by others in their behalf are prohibited except for printing or ad-

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<sup>1</sup>The provision of 1896, requiring candidates and election committees to report expenses, was repealed in 1897.

vertising in newspapers or for securing halls for public speaking; penalty, fine or imprisonment. Every candidate is required to file a sworn statement setting forth in detail all sums of money contributed, disbursed, expended, or promised by him and by others in his behalf to secure his nomination or election and also all sums contributed, expended, or promised by him in connection with the nomination or election of other persons at such election. The statement is to show the date and the persons to whom and the purposes for which all such sums were paid or promised; penalty for failure to comply, a fine not exceeding \$5,000. Conviction of violation of law makes election null and void unless contestant is entitled to office. Penalties are provided for bribing election officers, for giving or receiving bribes, for giving away liquor, and for betting on elections.

*Washington.* Code, 1901, secs. 1748-49. Bribery of voters or giving away liquor on election day punishable by fine or imprisonment or both.

*West Virginia.* Const. 1872, art. 4, sec. 1. Bribery in an election disfranchises offender.

Code, 1899, c. 5, secs. 8-11. Provides penalties for bribery, treating, and for betting on elections.

*Wisconsin.* Rev. St. 1898, secs. 13, 4478-81, 4535, 4542b as amended by Laws, 1899, c. 341. The penalty for bribery at any election is imprisonment, at any caucus or preliminary meeting, fine or imprisonment or both; conviction of bribery excludes from right of suffrage unless restored to civil rights; office obtained by bribery is to be deemed vacant. Betting on any election is punishable by fine and loss of vote.

Secs. 4543b-f as amended by Laws, 1905, c. 502.

Contributions of money to aid the nomination or election of any person to the legislature by non-resident of district are prohibited; penalty for violation, imprisonment; not to apply to payments for his own personal expenditures by any person participating in a campaign nor to contributions made to committees to be expended for general purposes. A sworn statement is to be filed by every candidate showing in detail each item in excess of \$5.00 contributed, disbursed, expended, or promised by him and to the best of his knowledge by others in his behalf in endeavoring to secure the nomination or election of himself or of any other person and also showing the dates when and the persons to whom and the purposes for which such sums were paid, expended, or promised. Such statement shall also set forth that the same is as full and explicit as affiant is able to make it; the county clerk is to publish names of candidates failing to comply and the district attorney is to examine all statements filed and to institute prosecutions for violations; penalty for violation is fine of not less than \$25 nor more than \$500. Accounts of disbursements by political committees are to be kept by treasurer through whose hands all funds are to pass and who is required to keep and file a full and detailed statement of the sums received or disbursed, giving the date when and the person for whom received and to whom paid and the object and purpose for which the sum was received or disbursed, together with a complete account of the outstanding financial obligations of the committee; violation by treasurer punishable by imprisonment.

Laws, 1905, c. 492. Prohibits political contributions by corporations. Penalty, fine of not less than \$100 nor more than \$5,000 or by imprisonment of

from one to five years or both fine and imprisonment in the discretion of the court.

*Wyoming.* Const. 1889, art. 6, sec. 8. Requires that every legislator and every judicial state or county officer before entering upon duty swear that he has not paid or contributed or promised to pay or contribute directly or indirectly any money or other valuable thing to procure his nomination or election except for necessary and proper expenses expressly authorized by law.

Rev. St. 1899, sec. 379. Betting on elections disqualifies for voting or for holding office.

## SUMMARY

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The leading provisions of contemporary laws<sup>1</sup> may be briefly outlined under the following headings: 1. publicity; 2. restrictions on contributions; 3. limitations on expenditures; 4. procedure for judicial inquiry; 5. penalties.

### Publicity

*Statements of receipts and expenditures.* The requirements made in the different states for filing sworn, itemized statements vary. Provisions exist for statements by candidates, political agents, committees, and others handling funds.

*Candidates.* For statements required of candidates compare the laws of Ariz. Cal. Col. Conn. Mass. Minn. Mo. Mont. Neb. N. Y. Tex. Va. and Wis.

*Committees.* Compare Ariz. Cal. Col. Conn. Mass. Minn. Mo. Mont. Neb. Tex. and Wis. for statements required of political committees.

*Political agents.* The English statute of 1883, 46 and 47 Vict. c. 51, explicitly requires that every candidate and also his head agent file sworn statements giving the names of all persons employed and the amounts paid to them.

*Others handling funds.* The Texas law of 1905 has the inclusive provision that "all others handling funds" also file sworn, itemized statements.

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<sup>1</sup>For a comparison of the laws of the different states see, *Laws and Judicial Decisions*.

*Publication of statements.* Some of the laws merely require that the statements be filed for public inspection; others provide for advertisement in newspapers, while still others require publication in the form of a public document.

Compare laws of Cal. Col. Conn. Mass. Neb. Va. Wis. England, and Ontario.

### **Restrictions on contributions**

Among recent attempts to limit the source of funds are those prohibiting contributions by corporations. Limitations have also been placed upon the solicitation of candidates, and the assessment of public officers and employees. Prohibiting contributions by non-residents of district to aid in the nomination or election of any person to the legislature is a further attempt to limit the sources of funds.

*Corporate contributions.* Compare the laws of Mo. Neb. and Tenn. for 1897; Fla. 1898; Ky. 1900; and Wis. 1905. Forfeiture of charter or of the right to do business within the state are among the penalties imposed for violation.

*Restrictions on non-residents.* See Wis. Rev. St. 1898, sec. 4543b, prohibiting non-resident contributions.

*Solicitation of candidates.* Compare laws of Cal. Conn. Ill. and N. J. making solicitation of candidates unlawful. Contributions to authorized committees or agents permitted.

*Political assessments.* See U. S. Act of Cong. Aug. 15, 1876, c. 287, sec. 6, forbidding assessments.

### **Limitations on expenditures**

Expenditures are limited as regards the purpose of payments, the amount that may be spent, and the agency for the disbursements of funds.

*Purpose of payments.* Among the payments prohibited are those for bribery, betting, treating, and entertainment.

*Bribery.* Giving or receiving a consideration for a vote was an offense at common law. *Rex v. Pitt.* 1762, 3 Burr. 1335.

*Betting.* Compare laws of Ariz. Cal. Me. Mo. Neb. N. D. Okla. Pa. Tex. and Wis. making betting on elections illegal.

*Treating and entertainment.* Compare laws of Ark. Fla. Miss. N. H. N. C. and S. C. prohibiting treating and entertainment.

Expenditures either prohibited or closely limited include: payments for naturalization fees, or poll taxes of others; the hiring of conveyances and an undue number of workers; and the payment of money for bands, torches, badges, and other insignia.

*Naturalization fees.* Compare laws of Conn. and Neb. making payment of fees for another unlawful.

*Poll taxes.* See Tex. Laws, 1905, c. 11 for strict prohibitions against paying or pledging the poll tax of another.

*Hiring conveyances, bands, etc.* The English law of 1883 makes hiring conveyances to bring electors to the polls an illegal practice, and paying for bands, torches, etc. illegal payments.

*Election workers.* See the English law, 1883, which deprives election workers of vote, and the Minn. law of 1895, c. 277, which limits their employment for designated duties.

*Amount spent.* In several states the amount which may be spent is limited either according to the number of voters or to the amount of salary attached to office.

*Number of voters.* Compare the law of Minn. 1895, and of Mo. 1893, for limitations based on number of voters.

*Salary.* The Cal. law, 1893 limits the expenditures of candidates according to salary.

*Responsibility for expenditures.* Requiring expenditures to be made exclusively through designated and duly authorized agents secures unity and responsibility in disbursements.

The Conn. law of 1905 requires all election expenses to be paid by treasurers of committees, or by political agents, except specified expenditures permitted to candidates.



### Procedure for judicial inquiry

Among the methods employed to secure judicial inquiry into election offenses are the following:

*Initiative by citizens.* This method enables any elector or group of electors to institute proceedings.

Compare laws of Cal. 1893, and of Conn. 1905, for this method.

*Suit by candidate.* Another method of procedure is to authorize the candidate having the next highest number of votes to bring suit in the name of the state in case the attorney general fails to act upon a petition charging violations of the law.

For an application of this plan see the Mo. law of 1893.

*Official inquiry.* The laws quite generally provide for official initiative to bring offenders to trial.

Compare the various methods of Cal. Conn. Mass. Minn. N. Y. and Wis. in providing for inquiry into election offenses.

*Trial of petitions.* Usually several judges preside in the election court and there is no jury. In some states there are only two judges and a unanimous decision is necessary for conviction.

Compare laws of Conn. N. Y. and Minn. for different methods.

*Appeals.* Provision is made for appeal from election courts to higher courts as in other cases.

In Cal. whenever an election is annulled, appeal must be taken within ten days. In Ontario appeals are given precedence over all ordinary cases.

### Penalties

The penalties of the law vary according to the nature of the offense and the statutory provisions of the different jurisdictions.

*Fines and imprisonment.* The severity of the penalties varies greatly in the different states, ranging from trifling sums to thousands of dollars for fines and from brief periods of confinement in jail to long imprisonment in the penitentiary.

For a variety of penalties compare the laws of Cal. Conn. Mass. Minn. Mo. Neb. N. Y. Va. and Wis.

*Disfranchisement.* Exclusion from the right of suffrage for varying periods is made the penalty for different corrupt practices.

The Illinois law of 1899, c. 46, disfranchises the bribe taker from five to fifteen years, and for a second offense, forever. Was held constitutional, *Christie v. People*, 1903, 206 Ill. 337.

Kentucky makes both the giving and the taking of a bribe at an election punishable by loss of suffrage.

*Disfranchisement of district.* During the 19th century quite a number of election boroughs in England were disfranchised on account of the prevalence of bribery.

*Forfeiture of office.* In England it is a recognized principle that bribery disqualifies for holding office. In the United States constitutional or statutory provisions making bribery a disqualification for office are found in most of the states.

See *State v. Elting*, 1883, 29 Kan. 397; *State v. Collier*, 1880, 72 Mo. 13; *State v. Olin*, 1868, 23 Wis. 309.

But in the absence of such provisions the courts have generally held that bribery would not disqualify a candidate for holding office.

*People v. Thornton*, 1881, 25 Hun. (N. Y.) 456; *Com. v. Shaver*, 1842, 3 W. & S. (Pa.) 338; *People v. Goddard*, 1885, 8 Col. 461.

Under some of the laws requiring statements of

election contributions and expenditures, failure to conform brings forfeiture of office.

Compare laws of Cal. Minn. Mo. and Neb. respecting forfeiture.

The N. Y. statute provides for forfeiture of office for corrupt practices but has no proceeding to enforce the penalty.

*Annulment of election.* An election secured by bribery is void.

Universally the rule. *Wayne Co. v. Judges*, 1895, 106 Mich. 166; *People v. Thornton*, 1881, 25 Hun. (N. Y.) 456; *State v. Purdy*, 1874, 36 Wis. 213.







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COMPARATIVE LEGISLATION BULLETIN  
No. 4

## EXEMPTION OF WAGES

MARGARET A. SCHAFFNER



MADISON, WISCONSIN  
MAY 1906

In the regular session of the Wisconsin legislature in 1905, many bills were introduced relating to garnishment and exemptions. Assembly bill No. 48 passed both houses and was vetoed by the Governor (see Assembly Journal, 1905, p. 1316). Bill of this nature will be introduced in the next session of the legislature. This bulletin gives in a condensed form the laws of different states and countries relating to exemption of wages. It was hoped to include other exemptions but the task was too great for the present.

The data included in this bulletin would be difficult to obtain during the rush of the legislative session. It is hoped that it will aid materially in the preparation of bills.

CHARLES MCCARTHY

*Librarian, Legislative Reference Department*



# EXEMPTION OF WAGES

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MARGARET A. SCHAFFNER

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COMPARATIVE LEGISLATION BULLETIN—NO 4—MARCH 1906

Compiled with the co-operation of the Political Science Department of the University of Wisconsin

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American State Reports. Exemption of wages, salaries, and earnings. San Francisco, 1905 (In vol. 102, p. 81-103)

Reviews and classifies leading American decisions under the following headings: exemption as dependent upon the nature of employment, the character of compensation, the classes of persons entitled, the use of the fund, the reservation of a specified amount, and the period during which amount was earned. Also considers the phraseology and the construction of exemption statutes.

Cyclopedia of law and procedure. New York, 1901-1906.

See title *Exemptions* for a brief summary of the legal doctrine relating to exemption of earnings, wages, and salaries.

Elster, Ludwig. Wörterbuch der Volkswirtschaft. 2 vols. Jena, 1898.

See title *Arbeiterschutzesetzgebung*, subtitle *Bestimmungen über Lohnzahlung*; discusses foreign legislation on exemption of wages.

France—Travail, Office du (Ministère du Commerce) Saisie-arrêt sur les salaires. Paris, 1899.

Gives results of an inquiry by the bureau of labor of the French ministry of commerce in response to a request from a senatorial committee charged with the examination of proposed changes in the law relating to the attachment of wages of working people, clerks, etc.

Hubbell, J. H. Legal directory. New York, 1905.

Includes a synopsis of laws relating to exemption of wages in the United States, Canada, and Mexico.

Pic, Paul. *Traité élémentaire de législation industrielle. Les lois ouvrières.* Paris, 1903.

Treats briefly exemption of wages from attachment, garnishment, or other mesne process in foreign countries, p. 712-27.

Rood, John R. *Treatise on the law of attachments, garnishments, judgments, and executions.* Ann Arbor, 1901.

Contains a collection of leading cases with notes.

U. S. Labor, Department of. *Foreign statistical publications—France.* Bulletin, March, 1901, no. 33, p. 336-40.

A brief review of conditions regarding wage exemptions and attachments in France.

## NATURE OF THE RIGHT

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### Definition

The general idea of exemption rights for debtors is set forth in the following definition: "An exemption is a privilege or immunity allowed by law to a judgment debtor by which he may hold property to a certain amount or certain classes of property free from all liability to levy and sale on execution, attachment, or other process issued in pursuance of and for the satisfaction of a money judgment."<sup>1</sup>

### Kinds of exemptions

Exemptions for debtors may be grouped according to the classes of property under homestead and personal property exemptions. From the view point of the solvency of the debtor, those exemptions which are permitted by the law in cases of bankruptcy are also to be considered.

*Homestead exemptions.* Constitutional and statutory provisions are found in most of our states exempting homesteads from execution. These exemptions vary both in amount and value, country

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<sup>1</sup> See 18 Cyc. Law and Proc. 1374.

homesteads varying within limits of from forty to one hundred and sixty acres and ranging from a hundred to five thousand dollars and upwards in value. City homesteads of equivalent values are similarly provided. Certain states place no limitation in value upon homestead exemptions.

*Personal property exemptions.* Among the classes of personal property commonly exempt may be enumerated: means for getting a living, including the libraries and instruments of professional men, farming utensils and means of reproduction, work animals, live stock, vehicles, equipment, tools and implements of trade, apparatus, and stock in trade; articles furnishing means of support or comfort, such as food, provisions, and supplies, wearing apparel, household furniture and goods; life insurance money; pension and bounty money and property purchased therewith; proceeds of exempt property; choses in action; property or money in lieu of specific exemption; and salary,<sup>1</sup> wages, or earnings.

*Exemptions in bankruptcy.* The debtor who secures discharge from further liability in case of bankruptcy besides being entitled to the usual homestead and personal property exemptions provided

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<sup>1</sup> Salaries of public officers are generally exempt; the grounds for this exemption are: 1. that the state or municipality is not subject to garnishment, 2. that public policy demands such exemption, 3. that the exemption of salary is within the statutory provision. Compare 54 L. R. A. 566. For recent legislation, however, see Ill. Laws, 1905, p. 285; N. Y. Laws, 1905, c. 175; N. D. Laws, 1905, c. 69; and Ut. Laws, 1905, c. 96.

in the several states<sup>1</sup> secures the additional advantage of reserving his future earnings intact against execution for past debts.

*Exemption of wages.* The enumeration of the various classes of exemptions evidences the fact that the exemption of wages from execution, attachment, garnishment, or other mesne process forms but one part of the general subject of exemptions.

### **Liabilities enforceable against exemption rights**

Among the more common liabilities enforceable against exempt property are: pre-existing liabilities,<sup>2</sup> debts not founded in contract,<sup>3</sup> purchase price,<sup>4</sup> debts for necessities,<sup>5</sup> including board and lodging,<sup>6</sup> debts for wages and material,<sup>7</sup> and debts due the government.<sup>8</sup>

### **Waiver**

In certain jurisdictions it is held that the exemption right may be claimed or waived at will;<sup>9</sup> in

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<sup>1</sup> Bankruptcy Act, July 1, 1898, as amended by Act, Feb. 5, 1903. (U. S. Comp. St. 1901, p. 3418, and U. S. Comp. St. Supp. 1903, p. 410)

<sup>2</sup> See *Brown v. Reiser*, 1890, 8 Pa. Co. C. 416; and *Finns v. Banker*, 1888, 5 Pa. Co. C. 311.

<sup>3</sup> See 18 Cyc. Law and Proc. 1387.

<sup>4</sup> See *In re Tobias*, 1900, 103 Fed. 68.

<sup>5</sup> See *Lenhoff v. Fisher*, 1891, 32 Neb. 107.

<sup>6</sup> See *Thomas v. Glasgow*, 1892, 2 Pa. Dist. 711.

<sup>7</sup> See *Dickinson v. Rahn*, 1901, 98 Ill. App. 245; contra *Frutchey v. Lutz*, 1895, 167 Pa. St. 337.

<sup>8</sup> See *U. S. v. Howell*, 1881, 9 Fed. 674.

<sup>9</sup> See *Keybers v. McComber*, 1885, 67 Cal. 395; *Moss v. Jenkins*, 1896, 146 Ind. 589; *Fogg v. Littlefield*, 1877, 68 Me. 52.

others the debtor is not allowed to waive his exemption in property exempt for the use of his family.<sup>1</sup>

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<sup>1</sup> See *Burke v. Finley*, 1893, 50 Kan. 424; *Ross v. Lister*, 1855, 14 Tex. 469; *Powell v. Dally*, 1896, 163 Ill. 646.



## LAWS AND JUDICIAL DECISIONS<sup>1</sup>

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The laws exempting wages in different countries may be grouped into three general classes:<sup>2</sup> 1. those providing for total exemption without reference to amount of wages earned; 2. those granting total exemption up to a certain maximum amount; 3. those providing for the exemption of a proportionate part of wages.

Grouping leading foreign countries according to the main provisions of their law, Germany, England, Norway, and Brazil fall in the first group; Hungary, Austria, and Spain in the second; and Belgium, France, Luxemburg, and Russia in the third.

The majority of the different laws in the United States belong to the second and third groups; while

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<sup>1</sup> In summarizing the main features of the exemption of wages, attention is centered largely on points which relate to the positive rights conferred rather than to the remedies developed to make those rights effective. But while limitations of space forbid any considerable reference to the processes against which the right of exemption may be asserted or to the proceedings to enforce and protect the right it must not be forgotten that the difference between an effective law and one which secures but indifferent results is more frequently found in the remedies provided for maintaining the right than in the amount of the property exempt.

<sup>2</sup> See Plc, *Traité élémentaire de législation*...p. 712-27; also Elster, *Wörterbuch*, title '*Arbeiterschutzgesetzgebung*.'

a few states<sup>1</sup> have constitutional or statutory requirements making exemptions as complete as the foreign countries of the first group.

### Foreign countries<sup>2</sup>

*Germany.* The law of 1869 modified by the law of 1897 provides for the total exemption of wages without reference to the amount earned.<sup>3</sup> If the laborer after the execution of the work or furnishing of services voluntarily allows his remuneration to remain unclaimed after the day on which he could claim pay, the wages or salary may become liable for debts. But with the exception of this voluntary waiving of rights the law specifically states that wages and salaries are not subject to garnishment or attachment proceedings except in favor of the relatives of the employee who under the law have a right to support from him. The law further makes employers paying wages or salaries to creditors of employees liable to a fine limited to 150 marks (\$35.70) or imprisonment not exceeding four weeks. The assignment of wages is also forbidden.

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<sup>1</sup> See Tex. Const. 1876, art. 16, sec. 28; also Ga. Const. 1877 as amended in 1887 and Civ. Code, 1895, sec. 4732.

<sup>2</sup> The references to foreign money are also given in terms of our own but the amount of the exemption must be considered from the standpoint of purchasing power in the several countries in order to understand its real significance. A further point to be considered in a comparison of the several countries is the proportion that the exemption bears to the usual wage earned by able bodied artisans maintaining a fair standard of life.

<sup>3</sup> See Law of June 21, 1869, and of Mar. 29, 1897; also sec. 148 of Gew. O. Ziff. 13.

*Norway.* The law of March 29, 1890, provides for total exemption of wages without reference to the amount earned.

*England.* The Merchant Shipping Act, 1854, 17 and 18 Vict. c. 104, ser. 233, provides that seamen's wages due or accruing shall not be subject to attachment or arrestment from any court.

Under the Wages Attachment Abolition Act, 1870, 33 and 34 Vict. c. 30, no attachment of wages of any servant, laborer or workman is permitted.

The salary of a secretary to a company amounting to two hundred pounds (\$973.30) a year is not "wages" of a "servant" within the Wages Attachment Abolition Act, and is therefore not exempted from attachment by that act. *Gordon v. Jennings*, 1882, 9 Q. B. D. 45.

The exemption of wages is less effective in England than in several continental countries because the assignment of wages is permitted.<sup>1</sup>

*Australia.* The states of the Australian commonwealth have quite generally a maximum exemption of wages and salaries amounting to two pounds (\$9.733) a week. The Victoria act of 1898, no. 1573 and the New South Wales act of 1900, no. 6, are typical of Australian statutes for wage exemptions.

*Canada.* The laws for the exemption of wages in Canada are somewhat similar to those of the United States. Manitoba, Rev. St. 1902, c. 68, is typical of

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<sup>1</sup> See Supreme Court of Judicature Act, 1873, 36 and 37 Vict. c. 66, sec. 25, subd. 6.

those provinces which grant total exemption up to a certain maximum amount, while Quebec, Code Civ. Proc. 1902, art. 599, sec. 11, illustrates those which exempt a proportionate part of the wages earned.<sup>1</sup>

*New Zealand.* The Act of 1895, no. 22, exempts wages not exceeding two pounds (\$9.733) per week. Any surplus above that sum is liable to attachment but the costs are not chargeable against the workman unless the creditor recovers a sum equal to or greater than costs.

*Austria.* The law of Apr. 25, 1873 modified by the law of May 26, 1888, provides for total exemption of wages, not exceeding eight hundred florins (\$385.80) a year, for laborers whose time is fixed by law, agreement, or usage at a year at least and whose employment ceases only upon three months notice. Wages of other laborers are exempt up to two-thirds of the total amount.

*Hungary.* The law of Civil Procedure, June 1, 1881, art. 62, exempts wages below one florin, fifty kreutzer (\$0.623) per day.

*Spain.* The Civil Code provides for the total exemption of wages below twenty-four réaux (approximately \$1.158) per day.

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<sup>1</sup> For a summary of Canadian exemption statutes see Hubbell, Legal directory, 1905, p. 816-54.

*Switzerland.* The Swiss law of Apr. 11, 1889, leaves the care of fixing the proportion of wages which may be attached to the judicial authority.

*France.* The law of Jan. 12, 1895, exempts nine-tenths of the wages of laborers; emoluments or salaries not exceeding 2,000 francs (\$386) are similarly exempt. The law also permits an assignment not to exceed one-tenth of wages. (The assignable tenth is distinct from the attachable tenth and must not be confused with it.) Finally the employer is also permitted to retain a tenth,—distinct both from the assignable and the attachable tenth,—for advances in cash made to an employee. In case of the attachments, assignments and retentions permitted by the law all being enforced against the laborer, he is still guaranteed at least seven-tenths of his wages. The procedure under the French law is so cumbersome that the cost of proceedings against the one-tenth attachable frequently exceeds the amount of the debt. This works to the general disadvantage of debtor, creditor, and employer.<sup>1</sup>

*Belgium.* According to the law of Apr. 18, 1887, four-fifths of the wages of laborers are exempt. The rule also applies to salaries not exceeding 1200 francs (\$231.60).

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<sup>1</sup> Various amendments to the French law have been proposed and certain modifications of the law are now (Feb. 1906) under consideration.

*Luxemburg.* The law of July 12, 1895, exempts nine-tenths of wages not exceeding six francs (\$1.158) a day, and four-fifths of wages exceeding that amount.

*Russia.* The law of 1886 exempts one-third of the wages of an employe having a family to support, and one-fourth the wages of others.

### United States

Act of Cong. June 7, 1872 (Comp. St. 1901, sec. 4536) No wages due or accruing to any seaman or apprentice are subject to attachment or arrestment from any court.<sup>1</sup>

*Alabama.* Const. 1901, art. 10. Makes general provision for exemptions.

Code, 1896, sec. 2038, as amended by Acts 1898-99, no. 734. Exempts to amount of \$25 per month wages, salaries, or other compensation for personal services of laborers or employees residents of the state. The fact of such indebtedness being disclosed by answer of garnishee, the levy is void and is to be dismissed by the court unless plaintiff contests answer of garnishee.

sec. 2074. Wages or salary of deceased employe to a sum not exceeding \$100 may be paid to widow or to person having control of his minor

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<sup>1</sup> See *The John E. Holbrook*, 1874, (U. S. D. C.) 7 Ben. 356; *Hitchcock v. The St. Louis*, 1891, (U. S. D. C.) 48 Fed 312; *The Queen*, 1899, (U. S. D. C.) 93 Fed. 834.

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children, and the sum so paid is exempt as part of the \$1,000 in personality exempted to them.

sec. 3728. Set-offs not to defeat exemption of wages.

*Alaska.* Code Civ. Proc. 1900, sec. 273. Sixty days' earnings for personal services are exempt, if selected and reserved by the debtor at time of levy, if such earnings are necessary for family support.

*Arizona.* Civ. Code, 1901, secs. 388, 2732. Thirty days' earnings for personal services exempt when shown by debtor's affidavit or otherwise that such earnings are necessary for support of his family residing in territory.

*Arkansas.* Const. 1874, art. 9. General provision for exemptions.

Dig. 1894, sec. 3717. Wages of laborers and mechanics for sixty days exempt from garnishment or other legal process provided defendant files with court issuing process a sworn statement that wages claimed amount to less than his constitutional exemption and that he does not own sufficient other personal property to exceed amount exempted by the constitution.

*California.* Const. 1880, art. 17, sec. 1. Provides for exemption laws in favor of heads of families.

Code Civ. Proc. 1903, sec. 690, subd. 9, 10. Seamen's and seagoing fishermen's wages and earnings not exceeding \$300 are exempt. Thirty days' earn-

ings for personal services are exempt when necessary for use of debtor's family residing in the state and supported in whole or in part by his labor; but where debts are incurred for common necessities of life or have been incurred when debtor had no family residing in the state one-half of such earnings are subject to execution, garnishment or attachment to satisfy debts so incurred.

*Colorado.* Const. 1876, art. 18, sec. 1. "The general assembly shall pass liberal . . . exemption laws."

Anno. St. 1891, sec. 2567, as amended by Acts, 1894, c. 5 and Acts, 1903, c. 132. Sixty per cent of wages or earnings exempt from levy under execution, attachment, or garnishment provided debtor be the head of a family or the wife of the head of a family residing in the state and dependent in whole or in part upon such earnings for support. The entire sum exempt when wages do not exceed \$5 per week.

*Connecticut.* Gen. St. 1902, secs. 774, 777. No costs are to be taxed in favor of plaintiff unless he has made prior demand upon defendant for debt. Plaintiff not to recover costs exceeding one-half of amount of damages recovered.

sec. 836. No assignment of future earnings is valid against an attaching creditor unless made to secure a bona fide debt due at date of such assignment.



Laws, 1903, c. 95, as amended by Laws, 1905, c. 195. The sum of \$25 accrued by reason of personal services including wages due for personal services of any minor child is exempt from foreign attachment or execution, but no exemption for any debt incurred for personal board.

*Delaware.* Rev. Code, 1893, c. III, sec. I. Fifty per cent of wages for labor or service of any person and all wages of women and minors are exempt from execution.

c. 111 as amended by Acts, 1901, c. 209 (Applies only to New Castle Co.) Ninety per cent of wages for labor or service of any person residing within New Castle county is exempt from attachment and execution except for debts for board or lodging. Amount exempt not to exceed \$50. The ten per cent is liable for necessities only. Only one attachment may be made. The total liability of the debtor for costs under any attachment is not to exceed ninety cents provided, however, that costs are to be paid out of the whole amount of wages.

*District of Columbia.* Code, 1901, amended, 1902, sec. 1107. Earnings are exempt from execution to the amount of \$100 each month for all actual residents who have provided for the support of a family in the district for two months preceeding the issuing of the writ or process.

*Florida.* Const. 1885, art. 10. Makes general provision for exemptions.

Rev. St. 1891, sec. 2008, 2009. Earnings for personal services of the head of a family are exempt. In case of attachment the person to whom money is due may make oath that money attached is due for personal labor and service and that he or she is the head of a family residing in the state and if such affidavits are not denied within two days after service of notice the process is to be returned and all proceedings under the same are to cease. If facts are denied by party issuing process matter is to be tried by court.

*Georgia.* Const. 1877, as amended in 1887, art. 9. General provision for exemptions.

Civ. Code, 1895, sec. 4732. All journeymen, mechanics, and day laborers are exempt from garnishment on their daily, weekly or monthly wages whether in the hands of their employers or others.

A general waiver of the benefits of a laborer's exemption in a note is void. *Green v. Watson*, 1885. 75 Ga. 471.

Wages improperly in the hands of a magistrate through garnishment may be recovered by a rule against him. *Curran v. Fleming et al.* 1885, 76 Ga. 98.

A locomotive engineer's monthly wages are exempt. *Sanner v. Shivers*, 1886, 76 Ga. 335.

And the monthly wages of a private secretary. *Abrahams v. Anderson et al.* 1888, 80 Ga. 570.

And the wages of a conductor on a street railway. *Stuart v. Poole*, 1901, 112 Ga. 818.

Wages of a superintendent in a factory are not exempt. *Kyle v. Montgomery et al.* 1884, 73 Ga. 337.

Nor of a railway passenger conductor. *Miller & Bussey v. Dugas*, 1886, 77 Ga. 386.

Laws, 1898, no. 19. Sending claims for debts out of state with intent to deprive any resident of his exemption rights made a misdemeanor punishable

by fine ranging from \$10 to \$50 for each claim transferred.

Laws, 1902, p. 60. Wages to the amount of \$100 of deceased employee of corporation may be paid to widow or guardian of minor children and such sum is exempt from execution.

Laws, 1904, p. 79. Contracts made for assignment or pledge of unearned wages or salary are void.

*Hawaii.* Acts, 1901, no. 9, secs. 1, 8, as amended by Acts, 1903, no. 52. One-half the wages due every laborer or person working for wages are exempt from attachment, execution, distress and forced sale of every nature and description.

*Idaho.* Code Civ. Proc. 1901, sec. 3542. Thirty days' earnings for personal services are exempt when necessary for the use of debtor's family residing in the state.

*Illinois.* Const. 1870, art. 4, sec. 32. "The general assembly shall pass liberal . . . exemption laws."

Rev. St. 1903, c. 62, sec. 14. Wages to the amount of \$15 per week are exempt for the head of a family residing with the same. Only the surplus above such exempt wages is to be held by employer to abide the event of the garnishment suit. If costs of the garnishment exceed surplus so held the remainder is to be paid by plaintiff. In no case is any employer to be liable to answer for any amount not earned at the time of service of writ. At least

twenty-four hours before bringing suit a demand in writing is to be made upon the wage earner and the employer for the excess above the amount exempted. Receipt of such demand is to be endorsed thereon at the time of service and the return duly sworn before it is lawful to issue a summons or to require an employer to answer in any garnishee proceeding. Any judgment rendered without such demand duly proven and filed is void. The excess of wages is to be held by employer five days after service of demand.

secs. 32-34. Sending or assigning any claim for debt outside of state to be collected by proceedings in attachment, garnishment or other mesne process with intent to deprive a resident of Illinois of exemption rights is punishable by a fine of not less than \$10 nor more than \$50. In case of garnishment proceedings against non-residents the law of the state of residence controls.

Sending claim out of state to be collected when garnishee is within reach of our courts is a misdemeanor. *Wabash R. Co. v. Dungan*, 1892, 142 Ill. 248.

sec. 34a. Wages earned outside the state and payable out of the state are exempt from attachment or garnishment in all cases where the cause of action arose outside of the state, unless the defendant is personally served with process. In case there is no personal process the suit is to be dismissed at the cost of plaintiff.

If the creditor, debtor, and garnishee at the time of the creating of both debts are all residents and doing business in the same state, the exemption of wages is such an incident and condition of the debt from the employer that it will follow the debt, if the debt follows the person of the

garnishee into another state, and attach itself to every process of collection in any state, unless jurisdiction is obtained over the person of the principal debtor. *B. & O. S. W. R. Co. v. McDonald*, 1904, 112 Ill. App. 391.<sup>1</sup>

*Indiana*. Const. 1851, art. 1, sec. 22. "The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws exempting a reasonable amount of property from seizure or sale for the payment of any debt or liability hereafter contracted". . .

Anno. St. 1901, sec. 715. Entitles householders to an exemption of \$600.

sec. 970. Wages due to non-residents from any person or corporation doing business in the state are not subject to any attachment, garnishment, or supplementary proceeding in the courts of the state.

secs. 971-72. Wages of householders are exempt from execution to an amount not exceeding \$25 at any one time. Garnishee may pay exempted wages to employee and such payment discharges garnishee from liability for the amount so paid as effectually as if paid before the summons.

sec. 2283. Sending claim out of state for collection is punishable by fine ranging from \$20 to \$50.

Personally taking claim out of the state is sending it within the meaning of this section. *Wilson v. Joseph*, 1886, 107 Ind. 490.

The collection of a claim in contravention of this section renders the creditor liable to the debtor. *Main v. Field*, 1895, 13 Ind. App. 401.

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<sup>1</sup> Compare the recent decision of the U. S. supreme court in *Louisville & N. R. Co. v. Deer*, 1906, 26 Sup. Ct. Rep. 207, as to jurisdiction in garnishment when the garnishee is a foreign corporation.

In construing secs. 971-72, that the wages of householders not exceeding \$25 shall be exempt from garnishment, with the general exemption in sec. 715 allowing to resident householders an exemption of \$600, the latter applies to resident householders and the former to householders not resident in the state. *Pomeroy v. Beach*, 1897, 149 Ind. 511.

*Iowa*. Code, 1897, sec. 4011. Personal earnings within ninety days preceding the levy are exempt for a debtor who is the head of a family and a resident of the state.

The object of the statute being to protect the earnings of the debtor from subjection to his debts, it is not to be limited in its application to cases of attachment or execution, but is to be extended so as to afford protection against any method of subjecting such earnings to the claims of creditors. *Millington v. Laurer*, 1893, 89 Ia. 322.

sec. 4017. Failure to claim exemption does not waive right unless such claim is required in writing by an officer about to make levy.

sec. 4018. Sending claims out of state to defeat exemption is a misdemeanor, punishable by a fine ranging from \$10 to \$50.

sec. 3948. as amended by Acts, 1898, c. 103. Defendant in garnishment action may plead exemption and if such exemption is shown in trial of issue the garnishee is to be discharged as to that part which is not liable.

Laws, 1904, c. 124. Wages of non-resident earned outside of state and payable outside of state are exempt from attachment or garnishment by non-resident creditor on cause of action arising without state. Duty of garnishee to plead exemption unless defendant is personally served with original notice in the state.

*Kansas.* Const. 1861, art. 15, sec. 9. General provision for exemptions.

Gen. St. 1901, secs. 4966, 4967. Earnings for personal service for three months' time are exempt when shown by debtor's affidavit or otherwise that such earnings are necessary for family support. Debtor must notify plaintiff on filing affidavit and matter sought to be proven may be controverted.

This exemption being created for the benefit of the debtor's family cannot be waived. *Burke v. Finley*, 1893, 50 Kan. 424.

Laws, 1905, c. 337. Judgment for defendant does not discharge attachment or garnishment if plaintiff appeals in time and in manner prescribed by law.

Laws, 1905, c. 523. Wages earned without state and payable outside of state are exempt from attachment or garnishment in all cases where the cause of action arose out of the state unless defendant is personally served with process.

*Kentucky.* St. 1899, sec. 1697. For persons with a family resident in the state, wages amounting to \$40 for each member of the family are exempt in case other personal property which is exempt from execution attachment or distress is not on hand.

Laws, 1902, c. 23. Wages earned outside of state are exempt in all cases where the cause of action arose out of the state. Duty of garnishee to plead such exemption unless the defendant is actually served with process.

*Louisiana.* Const. 1898, art. 244-47. Makes provision for exemptions.

Rev. Laws, 1904, sec. 1696. Wages for personal services are exempt.

Wages of skilled laborers in trades are not exempt. State ex rel. I. X. L. G. Co. v. Land, 1902, 108 La. 512.

Laws, 1904, c. 165. Wages earned out of state are exempt from attachment if cause of action arose out of state. Duty of garnishee to plead exemption unless defendant is actually served with process.

*Maine.* Rev. St. 1903, c. 72, sec. 68 and c. 88, sec. 55. Wages for personal labor to the amount of \$20 for one month are exempt, except for necessities furnished to debtor or his family. Wages of minor children and of women are not subject to trustee process on account of any debt of parent or of husband.

*Maryland.* Const. 1867, art. 3, sec. 44. "Laws shall be passed by the general assembly to protect from execution a reasonable amount of the property of the debtor". . .

Pub. Gen. Laws, 1903, art. 9, secs. 33, 34. Wages amounting to \$100 are exempt from attachment by any process whatever. Attachment on future earnings forbidden. Provisions apply to non-residents.

*Massachusetts.* Rev. Laws, 1902, c. 189, secs. 27, 29, 31. Wages for personal service are exempt to the amount of \$20 unless attached for necessities for family in which case an amount not exceeding \$10 is exempt. Unlawful attachment punishable by fine not exceeding \$50 for the use of the person in-



jured. Wages of wife or children are exempt; also seamen's wages.

An employer's debt to his employee is not discharged by satisfying a judgment against himself as trustee when the sum involved is exempted under this section. *Burns v. Marland mfg. co.* 1860, 80 Mass. 487.

Wages collected and in the hands of an attorney at law are no longer under the protection of this statute though less than \$20 in amount. *Cook v. Holbrook* 1863, 88 Mass. 572.

Where wages are attached by trustee process the sum of \$10 reserved under the above section, is payable to the employee notwithstanding the pendency of the suit. *Sullivan v. Hadley co.* 1893, 160 Mass. 32.

*Michigan.* Const. 1850, art. 16. General provision for exemptions.

Comp. Laws, 1897, sec. 991, as amended by Acts, 1901, no. 172. Wages of householders to the amount of eighty per cent but in no case for more than \$30 nor less than \$8 are exempt from execution. Other employees are permitted exemptions equal to forty per cent of wages and for an amount not exceeding \$15 nor less than \$4.

A householder's family need not reside within the state to bring his wages within this statute. *Pettit v. Booming co.* 1889, 74 Mich. 214.

A garnishee pays over exempted wages at his peril. *Crisp v. Ft. W. & E. R. co.* 1894, 98 Mich. 648.

*Minnesota.* Const. 1857, art. 1, sec. 12. "A reasonable amount of property shall be exempt from seizure or sale for the payment of any debt or liability. The amount of such exemption shall be determined by law."

Rev. Laws, 1905, sec. 4317. Wages of any person not exceeding \$25 due for services thirty days

preceding the levy are exempt. Earnings of minor children exempt unless used for their special benefit.

A creditor will not be permitted to initiate a series of garnishments and thus tie up in hands of an employer separate amounts of money and then by another proceeding in garnishment appropriate these amounts to the payment of his debt. Such proceedings are a perversion of civil process and cannot be sanctioned. *Rustad v. Bishop*, 1900, 80 Minn. 497.

*Mississippi*. Rev. Code, 1892, sec. 1963. Wages of head of family are exempt to the amount of \$100, of every other person to the amount of \$20.

A laborer cannot be made to lose the right given by this section by failure of garnishee debtor to plead exemption. *Laurel v. Turner*, 1902, 80 Miss. 530.

This law cannot be evaded by holding monthly balances until an aggregate exceeding \$100 is reached. The laborer has a right to his exemption at the end of each month unless his earnings exceed \$100. *Chapman et al. v. Berry*, 1895, 73 Miss. 437.

*Missouri*. Rev. St. 1899, sec. 384. Provisions for exemption of wages do not apply to non-resident defendant or one about to leave state with intent to change his domicile.

sec. 3162 as amended by Laws, 1903, p. 105. Each head of a family in lieu of other property exempt, may select and hold exempt wages not exceeding \$300 with the exception of ten per cent of the amount.

sec. 3435, as amended by Acts, 1903, p. 199. Ninety per cent of earnings for thirty days' service are exempt if employee is head of a family and a resident of state.

The continued payment by a garnishee of wages earned by his employee do not subject such garnishee to liability

when wages are for services rendered within thirty days prior to payments made. *Davis et al. v. Meredith et al.* 1871, 48 Mo. 263.

Payment by a garnishee of wages properly exempt does not relieve him of his debt to his employee for such wages. *Dunn v. M. P. R. co.* 1891. 45 Mo. App. 29.

secs. 3447, 3448. Where sum demanded is \$200 or less and where property sought to be reached is wages due defendant from a railway corporation judgment is to proceed issue of writ of garnishment. A railroad company need not answer in any action against any person to whom it may be indebted on account of wages for personal services where a writ of garnishment was served in advance of recovery by plaintiff against defendant in any action for \$200 or less, and any officer entering such judgment shall be considered a trespasser and may be enjoined by any court having jurisdiction.

*Montana.* Const. 1889, art. 19, sec. 4. "The legislative assembly shall enact liberal . . . exemption laws."

Code Civ. Proc. 1895, sec. 1222, as amended by Laws, 1905, c. 8. Earnings for thirty days are exempt when shown by debtor's affidavit or otherwise that they are necessary for support of family residing within state but one-half such earnings are subject to execution, garnishment, or attachment to satisfy debts for common necessities of life.

*Nebraska.* Comp. St. 1903, sec. 7099. Sixty days' wages of laborers, mechanics, and clerks who are heads of families are exempt. Provisions do not

apply to persons about to abscond or leave the state. Exemption applies whether wages are in hands of employer or of employee.

Exemption extends to non-residents. *Wright v. C. B. & Q. R. co.* 1886, 19 Neb. 175.

A laborer may maintain an action against a creditor to recover wages wrongfully garnished. *Albrecht v. Treitschke*, 1885, 17 Neb. 205.

sec. 7101. The assignment of claims to evade exemption of wages is unlawful.

One who assigns a claim contrary to the provisions of this statute is liable to the debtor for the amount so appropriated without his consent. *O'Connor v. Walter*, 1893, 37 Neb. 267.

*Nevada.* Const. 1864, art. 4, sec. 30. General provision for exemption laws.

Comp. Laws, 1899, sec. 3340. Earnings for personal services not exceeding \$50 for calendar month are exempt when shown by debtor's affidavit or otherwise to be necessary for family support.

*New Hampshire.* Pub. St. 1901, c. 245, sec. 20. Wages amounting to \$20 are exempt from trustee process if earned before service of writ except in action to recover for necessities furnished to debtor's family. Wages earned subsequent to writ are exempt from process. Earnings of debtor's wife and minor children are also exempt.

*New Jersey.* Gen. St. 1895, p. 116, sec. 103. Wages of non-resident employees are not liable to attachment by a non-resident creditor.

An attachment in New Jersey for wages can only issue against an absconding debtor, and wages cannot be reached under Acts, 1901, c. 177 upon an execution, except upon an

order that such installment of said wages as a judicial officer shall determine shall be paid from time to time. *Margarum v. Moon*, 1902, 63 N. J. Eq. 586.

*New Mexico.* Comp. Laws, 1897, sec. 1737, as amended by Laws, 1905, c. 82. Sixty days' earnings of head of a family or of a widow are exempt when shown by debtor's affidavit or otherwise that such earnings are necessary for support. Does not apply to debts incurred for manual labor or for necessities of life.

*New York.* Gilbert, Code Civ. Proc. 1905, secs. 1391, 1392, 2463, 3028. Sixty days' earnings for personal services are exempt when shown by debtor's oath or otherwise that such earnings are necessary for family support. Execution against ten per cent of wages where they exceed \$12 a week is authorized for recovery for necessities furnished or for personal services rendered to debtor.

To secure an execution against wages it must appear that the judgment was recovered wholly for necessities sold and that no similar execution is outstanding. *Neuman v. Mortimer*, 1904, 98 N. Y. App. Div. 64.

*North Carolina.* Const. 1868, art. 10. General provision for exemptions.

Code Civ. Proc. sec. 493. Earnings for personal services within sixty days preceding order are exempt when shown by debtor's affidavit or otherwise to be necessary for family support.

*North Dakota.* Const. 1889, art. 17, sec. 208. "The right of the debtor to enjoy the comforts and

necessaries of life shall be recognized by wholesome laws exempting to all heads of families . . . a reasonable amount of personal property, the kind and value to be fixed by law."

Code Civ. Proc. 1899, sec. 5567. Sixty days' wages are exempt when shown by debtor's affidavit or otherwise to be necessary for family support.

*Ohio.* Anno. St. (3rd ed.) secs. 5430, 5441, 5483, 6489. Every person having a family and every widow may hold three months' earnings, but not more than \$150, exempt when such earnings are shown to be necessary for support. In case the claim is one for necessaries then only ninety per cent is exempt.

sec. 7014. Sending claim out of state to evade exemption laws is punishable by fine ranging from \$20 to \$50. The person whose personal earnings are so attached has right of action to recover the amount and costs either from the person transferring the claim or from the one to whom the claim is transferred or both at the option of the person bringing suit.

The sale of a claim to a non-resident is not forbidden. *Goldsborough v. Bolenbaugh*, 1889, 3 Ohio C. C. 583.

*Oklahoma.* St. 1903, secs. 2985-87, 5084. Ninety days' earnings for personal or professional services on part of the head of a family residing in territory are exempt when shown by debtor's affidavit or otherwise that such earnings are necessary for

family support. Current wages are exempt for persons not heads of families.

To constitute a head of a family requires a condition of dependence on part of others whom one is under legal or moral obligations to support. An unmarried man supporting a dependent mother and sister is the head of a family within this section. *Rolater v. King*, 1903, 13 Okla. 37.

*Oregon.* Anno Codes and St. 1902, c. 2, t. 3, sec. 228, as amended by Laws, 1903, p. 26, and by Laws, 1905, c. 220. Thirty days' earnings not exceeding \$75 are exempt when shown by debtor's affidavit or otherwise that such earnings are necessary for family support; except that fifty per cent of such earnings are subject to attachment, execution, or garnishment, if debt was incurred for family expenses furnished within six months of service of process.

*Pennsylvania.* Dig. 1894, p. 834, sec. 40. Unlawful to send claims for debts outside of state with purpose of evading exemption laws. The assignor is made liable to the person or persons from whom any such claim has been collected by attachment or otherwise.

p. 836, sec. 49 and p. 2077, sec. 25, 26, as amended by Laws, 1905, no. 99. Wages of laborers or salaries of persons in public or private employment are not liable to attachment in hands of employer, except that wages due or owing may be attached for debts for board for a period not exceeding four weeks.

Includes non-resident laborers. *Billin v. Froment*, 1887, 3 Pa. Co. C. 450.

*Rhode Island.* Gen. Laws, 1896, c. 255, sec. 5, as amended by Pub. Laws, 1900-01, c. 751 and 841. Exemptions include: wages due or accruing to seamen; salary or wages due or payable to any debtor not exceeding the sum of \$10, except for necessities furnished defendant in which case adjustment is left to the discretion of the court; also the salary and wages of wife and of minor children.

*South Carolina.* Const. 1895, art. 3, sec. 28. General provision for exemptions.

Code Civ. Proc. 1902, sec. 317. Sixty days' earnings for personal services are exempt when shown by debtor's affidavit or otherwise to be necessary for family support.

*South Dakota.* Const. 1889, art. 21, sec. 4. "The right of the debtor to enjoy the comforts and necessities of life shall be recognized by wholesome laws, exempting a reasonable amount of personal property the kind and value of which is to be fixed by general law."

sec. 5. Earnings of a married woman are not liable for debts of husband.

Code. Civ. Proc. 1903, sec. 403. Sixty days' wages for personal services are exempt when shown by debtor's affidavit or otherwise to be necessary for family support.

Justices Code, 1903, sec. 41. In attachment suits brought against non-residents for wages earned and payable outside the state the exemption law of state of residence controls.



*Tennessee.* Const. 1870, art. 11, sec. 11. General provision for exemptions.

Laws, 1871, c. 71 as amended by Laws, 1905, c. 376. Exempts ninety per cent of wages or salary amounting to \$40 or less per month, and \$36 for persons earning in excess of \$40. Applies to the income of every resident of the state who is eighteen years of age or upward, or who is the head of a family. No attachment or garnishment is to be issued for future wages or salary.

Applies only to wages actually due and not to all wages earned. Pay day cannot be anticipated by a writ of garnishment. *Weaver v. Hill*, 1896, 97 Tenn. 402.

Laws, 1903, c. 21 and 453. Unless written assent of employer was given to assignment, he is not to be charged for any assignment of unearned wages or salary made by any employee.

Laws, 1903, c. 590. Wages earned and payable without the state are exempt where cause of action arose without the state. Duty of garnishee to plead exemption unless defendant is actually served with process.

*Texas.* Const. 1876, art. 15, sec. 28. No current wages for personal services shall ever be subject to garnishment.

Wages past due, left with employer, because employee can not collect from him, continue to be current wages. *Davidson v. Chair co.* 1897, 41 S. W. (Tex. Civ. App.) 824.

*Utah.* Rev. St. 1898, secs. 3243, 3245, as amended by Laws, 1901, c. 31, and Laws, 1905, c. 37. Minor's earnings are exempt for debts not contracted for his

special benefit. One-half the earnings of the head of a family for personal services rendered within thirty days preceding the levy are exempt from execution when shown by the debtor's affidavit that such earnings are necessary for support of his family residing in the state. When the earnings are \$2 a day or less the exemption is \$30 per month and in no case is the debtor to be taxed with the costs of proceeding. Requires the payment of a \$2 fee by the plaintiff to the garnishee before answer can be required in garnishment proceedings.

*Vermont.* St. 1894, c. 69, sec. 1312, as amended by Laws, 1896, no. 31, and Laws, 1905, no. 62. Wages for labor performed after the service of trustee process are exempt. Wages of a minor are not liable for debts of parent nor of a married woman for debts of husband. For non-residents exemption law of state of residence controls.

*Virginia.* Const. 1902, art. 14, secs. 190-94. General provision for exemptions.

Code, 1904, sec. 3652. Wages not exceeding \$50 per month owing to a laboring man being a householder are exempt from distress, levy, or garnishment.

This exemption cannot be waived. *Crumph v. Com.* 1882, 75 Va. 922.

The term "laboring man" includes all householders who receive wages for their services. *Mahoney v. James*, 1897, 94 Va. 178.

sec. 3652a. Sending claim for debt out of state in order to evade exemption laws is unlawful.

sec. 3652c. Wages of minors are not liable for debts of parents.

sec. 3656. An injunction may be awarded to prevent garnishment of exempt wages.

*Washington.* Const. 1889, art. 19. Provides that the legislature shall enact exemption laws in favor of all heads of families.

Code, 1901, sec. 565. Current wages for personal services amounting to \$100 are exempt for any person having a family to support, if garnishment is for debt for actual necessities no exemption in excess of \$10 per week for four consecutive weeks is allowed.

*West Virginia.* Const. 1872, art. 6, sec. 48. General provision for exemptions.

Code, 1899, c. 41, sec. 29a. Assigning claims for collection outside of state in order to evade exemption laws is unlawful.

c. 66, sec. 12. Earnings of a married woman are not subject to garnishment for husband's debt but are liable for her own debts.

*Wisconsin.* Const. art. 1, sec. 17. The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for the payment of any debt or liability hereafter contracted.

Rev. St. 1898, sec. 2982. Three months' earnings not to exceed the amount of \$60 for each month or

\$180 in all, are exempt for any person having a family dependent for support. Earnings of minor children are included. The garnishee shall recover costs when the debt or property sought to be reached is exempt from execution against the principal debtor at the time of serving the process on the garnishee.

In garnishment proceedings the burden is on plaintiff to prove the allegation of the garnishment affidavit that the indebtedness is not exempt. *Eastlund v. Armstrong*, 1903, 117 Wis. 394.

sec. 3723-3723b as amended by Laws, 1901, c. 280. Garnishee may plead exemption but is in no manner to be held liable to defendant or to any other person for failure to set up such exemption.

sec. 4438f. Any person, with the intent of depriving any bona fide resident of the state of exemption rights, assigning any claim for the purpose of having the same collected out of the earnings of a debtor or of his minor children in the courts of another state when the parties are all within the jurisdiction of the courts of the state is punishable by fine of not less than \$10 nor more than \$50 for each offense.

Laws, 1905, c. 148. Assignment of wages exempt from garnishment by married man is invalid unless signed by wife. Such assignment not valid for more than two months.

c. 226. The earnings of a minor are not liable for the debts of a parent who by reason of abandonment, drunkenness, or profligacy neglects to provide for the support or education of such minor.

*Wyoming.* Rev. St. 1899, secs. 2516-19. Any person making an assignment of debts in order to evade exemption laws is liable to the party injured for the amount so transferred, with all costs and expenses and a reasonable attorney's fee and is further liable by prosecution for a fine not exceeding \$100 and costs.

sec. 3951, as amended by Acts, 1903, c. 31. One-half the earnings for personal services rendered within sixty days preceding the levy are exempt when shown by debtor's affidavit or otherwise that such earnings are necessary for support of his family residing within the state.

## CONSTRUCTION

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Exemption statutes by an almost universal rule have been liberally construed. However, exceptions to the general rule of interpretation are found especially in the earlier decisions.<sup>1</sup>

The general attitude of the courts is shown in the following decisions:<sup>2</sup>

*Massachusetts.* "The [exemption] statute is humane and beneficial in its purpose and operation and fairly entitled to as liberal a construction as can be given it consistently with its true and just interpretation." *Pond v. Kimball*, 1869, 101 Mass. 105.

*Wisconsin.* "This court has uniformly held that the exemption laws must have a liberal construction so as to secure their full benefit to the debtor." *Below v. Robbins*, 1890, 76 Wis. 600.

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<sup>1</sup> For an example of strict construction see *Rue v. Alter*, 1847, 5 Den. (N. Y.) 119.

<sup>2</sup> For further illustrations of liberal construction, see *Good v. Fogg*, 1871, 61 Ill. 449; *Hutchinson v. Whitmore*, 1892, 90 Mich. 255; *Rustad v. Bishop*, 1900, 80 Minn. 497.

*Iowa.* "Exemption statutes are the product of an enlightened public policy which seeks to afford some measure of protection to the family of an unfortunate debtor as well as to the debtor himself and incidentally to the public and are always to be liberally construed to effect their intent and purpose." *Cook v. Allee*, 1903, 119 Ia. 226.









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# MUNICIPAL ELECTRIC LIGHTING

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ERNEST BRADFORD SMITH

MADISON WISCONSIN  
April 1908

## INTRODUCTION

This department is in constant receipt of letters from city officials and members of the legislature relating to municipal electric lighting. It is often asked, "What cities have municipal plants?" "How many exist in Wisconsin?" "How many exist in America?" etc.

This pamphlet has been compiled with the idea of answering these questions. The statistics, although not complete, have been gathered from every available source. A bulletin will soon be issued upon gas plants.

CHARLES MCCANNIV

*Legislative Reference Department*

# MUNICIPAL ELECTRIC LIGHTING

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ERNEST BRADFORD SMITH

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COMPARATIVE LEGISLATION BULLETIN--NO 5--APRIL, 1906

Compiled with the co-operation of the Political Science Department of the University of Wisconsin

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Based on reports from 632 out of a total of 2,572 private plants and 320 out of 460 municipal plants, 1898-99. No figures for places of less than 1,000 population.

## UNITED STATES

### **Increase in municipal plants**

The electric lighting business began in the United States about 1880; in Wisconsin, in 1884. Since that time there has been a great increase in both the number and size of electric light plants. The following table shows the development of both private and municipal plants since 1881:

**GROWTH IN UNITED STATES OF MUNICIPAL AND PRIVATE ELECTRIC  
LIGHT PLANTS<sup>1</sup> (table 1)**

Year	Municipal	Private	Total no.	Per cent of municipal plants
1881 .....	1	7	8	.....
1885 .....	16	151	167	9.5
1890 .....	137	872	1009	13.5
1895 .....	386	1690	2076	18.5
1900 .....	710	2514	3224	22.02
1902 .....	815	2805	3620	22.5
1905 (Sept.) <sup>2</sup> .....	988	3076	4064	24.3
1906 (Mar.) .....	1050	3234	4284	24.4

<sup>1</sup>Figures for 1881 to 1902 from U. S. Census office. Special report on central electric light and power stations, 1902, p. 106.

<sup>2</sup>Figures for 1905 and 1906 from Central station lists, Sept. 1905 and Mar. 1906.

From this table it will be observed that the total number of electric light plants has grown from 8 in 1881 to 4284 in March, 1906; of plants owned



by companies, partnerships and individuals, there were 7 in 1881 and 3234 in 1906; of plants owned by cities, villages or other municipal corporations, there was 1 in 1881 and 1050 in 1906. The number of municipal plants in 1885 was nearly 10 per cent of the total number; in 1895, 18½ per cent; in September, 1905, somewhat more than 24 per cent; a proportion slightly increased for March, 1906.

Carroll D. Wright reports the figures for 1899 as 460 municipal and 2,572 private plants; total, 3032. The Census bureau report for 1902 gives 815 municipal plants and 2805 private; total, 3,620.

The municipal year book, 1902, gives for cities of over 3,000 population, a total of 1,471 electric light plants, of which 278 were municipal. The Central station list, 1905, gives engineering and commercial data for 984 towns in which 988 municipally owned electric light plants exist; 2,932 towns in which 3076 plants were owned by private concerns; a total of 4,064 electric light plants in the United States in September, 1905. Six months later, March, 1906, there were 62 more municipal plants and 158 more private plants. This does not include companies furnishing power only, or mill plants lighting a local mill or factory. In the above municipal list are included five plants owned by colleges or universities and supplying light to outside consumers; and a few plants owned by cities and leased to private companies for operation.

The number of electric light plants by states is as follows:

## MUNICIPAL ELECTRIC LIGHTING

ELECTRIC LIGHT STATIONS BY STATES—MUNICIPAL AND PRIVATE, 1906<sup>1</sup>  
(table 2)

	Municipal plants	Towns where private plants exist	Private plants
Alabama .....	18	25	28
Arizona .....	0	16	17
Arkansas .....	8	42	43
California .....	13	94	106
Colorado .....	2	53	53
Connecticut .....	6	38	38
Delaware .....	6	4	4
Florida .....	10	25	26
Georgia .....	39	42	42
Idaho .....	2	27	28
Illinois .....	92	271	281
Indiana .....	64	116	124
Iowa .....	51	138	141
Indian territory .....	0	26	26
Kansas .....	17	62	65
Kentucky .....	13	64	64
Louisiana .....	14	20	20
Maine .....	3	57	63
Maryland .....	5	28	29
Massachusetts .....	23	93	95
Michigan .....	104	127	132
Minnesota .....	82	65	67
Mississippi .....	28	31	35
Missouri .....	51	78	88
Montana .....	1	24	27
Nebraska .....	14	57	59
Nevada .....	0	8	8
New Hampshire .....	3	45	48
New Jersey .....	4	79	81
New Mexico .....	0	13	13
New York .....	35	224	241
North Carolina .....	24	32	34
North Dakota .....	8	18	18
Ohio .....	101	153	165
Oklahoma territory .....	5	10	10
Oregon .....	10	48	48
Pennsylvania .....	39	234	253
Rhode Island .....	1	10	10
South Carolina .....	14	27	28
South Dakota .....	9	25	26
Tennessee .....	26	38	38
Texas .....	9	170	174
Utah .....	6	18	19
Vermont .....	12	39	39
Virginia .....	16	37	38
Washington .....	11	54	58
West Virginia .....	6	41	42
Wisconsin .....	46	120	123
Wyoming .....	0	16	16
Total in U. S. ....	1,050	3,080	3,234
Total of all plants in U. S. 1906 .....			4,284

<sup>1</sup> These figures compiled from Central station list, March, 1906

It is difficult to keep any list of municipal plants up to date, because new plants are added so rapidly. During the months from June to December, 1905, in the pages of the *Municipal journal and engineer* and in *Municipal engineering* were given the names of over forty cities which had just installed or voted to install municipal electric light plants; while in as many more, the clerk, or mayor, or a committee of the council was investigating the subject.

### **Consolidation**

Simultaneously with the increase in the number of electric plants, has come a consolidation of plants, the absorption of several small companies into one large concern, and the lighting of many small towns from one large central plant, a matter of common observation. At the same time, there is shown a tendency to combine electric, with gas and water works. The Census bulletin for 1902 reports 1,465 central stations out of 3,620, 40 per cent, which were run in connection with water works, gas plants, ice manufactories, etc.

### **Changes from municipal to private ownership**

Between 1881 and 1902, 13 plants had changed from municipal to private ownership.<sup>1</sup> The following electric light stations began operations as municipal plants, but have since passed into private ownership:

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<sup>1</sup>U. S. Census office. Special report on central electric light and power stations. 1902, p. 8.

CITIES WHICH HAVE CHANGED FROM MUNICIPAL TO PRIVATE OWNERSHIP (table 3)

	City	Population	Name of company
Alabama .....	Troy .....	4,097	City Electric Light and Water Plant Co.
Indiana .....	Bourbon .....	1,187	Union Water, Light and Power Co.
Iowa .....	Audubon.....	1,866	Audubon Electric Plant.
Minnesota ....	Fulda <sup>1</sup> .....	886	Electric Light Plant and Water Works.
New York.....	Waddington..	.....	Waddington Electric Light Plant.
Ohio .....	Xenia .....	8,696	Peoples Gas and Electric Light Co.
Pennsylvania..	Leighton <sup>1</sup>	4,629	Leighton Electric Light and Power Station.
Texas .....	Honey Grove.	2,483	Honey Grove Light and Power Plant.
Virginia .....	Itasca.....	1,277	Hockaday Brothers.
	Buena Vista.	2,388	Buena Vista Light and Power Co.
Washington ..	Wytheville...	3,003	Brown Electric Co.
	Vancouver...	3,126	City of Vancouver Electric Light Plant Co.
	Chehalis <sup>1</sup> ....	1,775	Chehalis Electric Light Plant.

<sup>1</sup> Given as municipal, 1905, by Central station list, Sept. 1905.

### Changes from private to municipal ownership

Of the 815 municipal plants in 1902, 645 were started as municipal plants, and 170 had been changed from private to public ownership. The municipal plants in the following cities and towns began operations under the ownership of individuals, firms or corporations:

CITIES WHICH HAVE CHANGED FROM PRIVATE TO MUNICIPAL OWNERSHIP (1881-1902) (table 4)<sup>2</sup>

		Pop. 1900
Arkansas .....	Conway .....	2,003
California .....	Alameda .....	16,464
	Modesto <sup>1</sup> .....	2,024
Colorado .....	Del Norte .....	705
Delaware .....	Milford .....	2,500
	Newark .....	1,213
Florida .....	Fernandina .....	3,245
	Kissimmee .....	1,132
	Ocala .....	3,380
Georgia .....	Albany .....	4,506
	Athens <sup>1</sup> .....	10,245
	Eastman .....	1,234
	Gainesville .....	4,382
	Griffin .....	6,857
	Moultrie .....	2,220
	Washington .....	3,300
Illinois .....	Chadwick .....	505
	Farmer City .....	1,664
	Flora .....	2,311
	Girard .....	1,661
	Hampshire .....	760
	Highland .....	1,970
	Kansas .....	1,049
	La Grange <sup>1</sup> .....	3,969
	Lockport .....	2,659
	Peru .....	6,863
	Princeton .....	4,023
	Rantoul .....	1,207
	Shelbyville .....	3,546
	Toledo .....	818
	Waterloo .....	2,114
	Wheaton .....	2,345
Indiana .....	Anderson .....	20,178
	Ashley .....	1,040
	Attica .....	3,005
	Bluffton .....	4,479
	Cambridge .....	1,734
	Dunkirk <sup>1</sup> .....	3,187
	East Chicago .....	3,411
	Garrett .....	3,910
	Goshen .....	7,810
	Greenfield .....	4,489
	Hobart .....	1,390
	Kendallville .....	3,354
	Knightstown .....	1,942
	Linton .....	3,071
	Lowell <sup>1</sup> .....	1,275
	Mentone <sup>1</sup> .....	757
	Mishawaka .....	5,560
	Montpelier .....	3,405
	Napanea .....	2,208
	Peru .....	8,463
	Portland .....	4,798
	Rockville .....	2,045
	Rensselaer .....	2,255

<sup>1</sup> Seven plants given as private by Central station list, Sept. 1905.<sup>2</sup> Authority, U. S. Census office, 1906.

CITIES WHICH HAVE CHANGED FROM PRIVATE TO MUNICIPAL OWNERSHIP  
(1881-1902)—continued

		Pop 1900
Indiana .....	Thorntown .....	1,511
	Williamsport .....	1,245
	Winamac .....	1,684
	Jonesboro .....	1,838
Iowa .....	Algona .....	2,911
	Bloomfield .....	2,105
	Fairfield .....	4,689
	Mount Pleasant .....	4,109
	Newton .....	3,682
	Spencer .....	3,005
	Spirit Lake .....	1,218
Kansas .....	Emporia .....	8,223
	Enterprise .....	1,200
	O-age City .....	2,792
	Seneca .....	1,846
Kentucky .....	Russellville .....	2,591
Louisiana .....	Franklin .....	2,692
Maryland .....	Laurel .....	2,079
Massachusetts .....	Belmont .....	2,117
	Hingham .....	5,059
	Hudson .....	5,454
	Hull .....	1,703
	Middleboro .....	6,845
	Taunton .....	31,026
	Badaxe .....	1,241
	Charlevoix .....	2,079
	Chelsea .....	1,635
	Cold Water .....	6,216
	Crosswell .....	606
	Dowagiac .....	4,151
	Escanaba .....	9,549
Michigan .....	Hillsdale .....	4,151
	Jonesville .....	1,367
	Lansing .....	19,485
	Mason .....	1,828
	Mendon .....	777
	Monroe .....	5,043
	Niles .....	4,287
	Petoskey .....	5,285
	Sturgis .....	2,465
	Union City .....	1,514
	Vassar .....	1,832
	Alexandria .....	2,681
	Argyle .....	829
	Austin .....	5,474
	Blue Earth .....	2,900
	Brainerd .....	7,524
	Hibbing .....	2,481
Minnesota .....	Kasson .....	1,112
	Long Prairie .....	1,385
	New Prague .....	1,228
	Tower .....	1,366
	Wadena .....	1,520
	Clarksdale .....	1,773
	Fulton .....	4,383
Mississippi .....		
Missouri .....		

CITIES WHICH HAVE CHANGED FROM PRIVATE TO MUNICIPAL OWNERSHIP  
(1881-1902)—continued

		Pop. 1900.
Missouri .....	Lebanon .....	2,125
	Pierce City .....	2,511
	Rolla .....	1,600
	Slater .....	2,502
Montana .....	Miles City .....	1,938
Nebraska .....	Pawnee .....	1,969
New York .....	Frankfort .....	2,664
	Greenport .....	2,366
North Carolina .....	Watervliet .....	14,321
	Goldsboro .....	5,877
	Morgantown .....	1,938
	Reidsville .....	3,262
North Dakota .....	Grafton .....	2,378
Ohio .....	Bradford .....	1,254
	Brerea .....	2,510
	Beverly .....	712
	Columbus Grove .....	1,935
	Greenfield .....	3,979
	Minerva .....	1,200
	Painesville .....	5,024
	Plymouth .....	1,154
	Troy .....	5,881
	Wellston .....	8,045
Oklahoma .....	Stillwater .....	2,431
Oregon .....	Hillsboro .....	980
	Medford .....	1,791
	Scio .....	346
	Aspinwall .....	1,231
Pennsylvania .....	Millvale .....	6,736
	Tarentum .....	5,472
	Dillon .....	1,015
South Carolina .....	Brookings .....	2,346
South Dakota .....	Pierre .....	2,306
	Redfield .....	10,015
	Harriman .....	3,442
	Lebanon .....	1,956
Tennessee .....	Morristown .....	2,973
	Newbern <sup>1</sup> .....	1,433
	Sherman .....	10,243
	Payson .....	2,636
Texas .....	Hardwick .....	1,334
Utah .....	Bedford City .....	2,416
Vermont .....	Front Royal .....	1,005
Virginia .....	Farmville .....	2,471
	Salem .....	3,412
	Centerville .....	1,600
	Ellensburg .....	1,737
Washington .....	Kent .....	755
	Port Angeles .....	2,321
	Pullman .....	1,308
	Tacoma .....	37,714
Wisconsin .....	Hayfield .....	1,689
	Cedarburg .....	1,626
	Florence .....	1,824

<sup>1</sup> Seven plants given as private by Central station list, Sept., 1905.

CITIES WHICH HAVE CHANGED FROM PRIVATE TO MUNICIPAL OWNERSHIP  
(1881-1902)—continued

		Pop. 1900.
Wisconsin .....	Fort Atkinson .....	3,043
	Jefferson .....	2,584
	New Richmond .....	1,631
	Oconomowoc .....	2,880
	Plymouth .....	2,237
	Two Rivers .....	3,784

**In small cities**

The great majority of all the electric light plants, private as well as municipal, are located in small cities.

Of a total of 3,620 plants in 1902, 2,714 were in cities of less than 5,000 population; of the 2845 private plants, 2,043 or 72 per cent; and of the 815 municipal plants, 671 or 82 per cent were in cities of less than 5,000. In 1899, in places of less than 1,000 population, there were located 9 per cent of the 2572 private plants and 9 per cent of the 560 municipal plants. In 1906, this number had increased to about 15½ per cent for municipal plants, and more than 19 per cent for private plants, as shown by the following table, compiled from the Central station list for March, 1906:



PRIVATE AND MUNICIPAL PLANTS IN SMALL AND LARGE CITIES (table 5)

	Municipal plants	Per cent.	Private plants	Per cent.
Villages of less than 1,000 population.....	160	15.4	592	19.3
Towns of 1,000-10,000 popula- tion.....	808	77.6	2,160	70.1
Cities of over 10,000 population	73	7.0	328	10.6
Total number of places..	1,041	100	3,080 <sup>1</sup>	100

<sup>1</sup>Some cities have two or more private plants, making the total number of private plants 3,284, while the total number of cities and villages having private plants is 3,080.

It is evident from these figures, that the towns of less than 1,000 inhabitants have a little larger proportion of private plants. But the strength of the municipal ownership movement is in the cities of from 1,000 to 10,000 population, 77.6 per cent of all places having municipal plants being included in these limits. Seven per cent of all the places having municipal plants were of more than 10,000 population, against 10 per cent for private plants. In seventy cities there were in 1905, both a municipal and one or more private plants.

### In cities over 10,000

The following table gives the list of cities of over 10,000 population, which have municipal electric light plants (1906):

CITIES OF OVER 10 000 POPULATION CONTAINING MUNICIPAL ELECTRIC  
LIGHT PLANTS—BY STATES (table 6)

		Pop. 1900
Arkansas .....	Little Rock .....	38,300
California .....	Alameda .....	17,350
Connecticut .....	New Britain .....	28,000
	Norwich .....	17,250
Florida .....	Jacksonville .....	28,400
Illinois .....	Aurora .....	24,000
	Bloomington .....	23,000
	Chicago (4 plants) .....	1,700,000
	Decatur .....	20,700
	Elgin .....	22,400
	Jacksonville .....	15,000
	La Salle .....	10,000
	Galesburg .....	18,600
Indiana .....	Anderson .....	20,000
	Hammond .....	12,400
	Huntington .....	19,500
	Logansport .....	16,200
	Marion .....	17,300
	Muncie .....	21,000
	Richmond .....	18,200
	Indianapolis .....	170,000
Iowa .....	Marshalltown .....	11,000
Kansas .....	Topeka .....	33,700
Kentucky .....	Henderson .....	10,200
	Owensboro .....	13,200
	Paducah .....	19,400
Maine .....	Bangor .....	21,850
	Lewiston .....	23,760
Maryland .....	Cumberland .....	17,100
	Hagerstown .....	13,600
Massachusetts .....	Chicopee .....	19,170
	Holyoke .....	45,700
	Pasbody .....	12,000
	Taunton .....	31,000
	Westfield .....	10,000
Michigan .....	Bay City .....	27,600
	Detroit .....	285,000
	Grand Rapids .....	87,500
	Kalamazoo .....	24,400
	Lausling .....	19,500
	Marquette .....	10,050
	West Bay City .....	13,120
Missouri .....	Hannibal .....	12,800
	Joplin .....	26,000
	St. Joseph .....	103,000
	St. Louis .....	575,200
Nebraska .....	Lincoln .....	40,100
New York .....	Dunkirk .....	11,600
	Jamestown .....	23,000
	Watervliet .....	14,300
Ohio .....	Ashtabula .....	13,000
	Columbus .....	125,560
	Hamilton .....	23,000
	Marietta .....	13,350
	Newark .....	18,150

CITIES OF OVER 10,000 POPULATION CONTAINING MUNICIPAL ELECTRIC  
LIGHT PLANTS—BY STATES—continued

		Pop. 1900
Pennsylvania .....	Allegheny .....	130,000
	Chambersburg .....	10,000
	Easton .....	25,200
	Meadville .....	10,200
	Norristown .....	22,200
South Dakota .....	Sioux Falls .....	10,200
Tennessee .....	Nashville .....	80,865
	Jackson .....	14,500
Texas .....	Austin .....	22,250
	Fort Worth .....	27,700
	Galveston .....	37,800
	Sherman .....	10,240
	Burlington .....	18,640
Vermont .....	Alexandria .....	14,500
Virginia .....	Danville .....	16,500
Washington .....	Seattle .....	80,670
	Tacoma .....	37,700
West Virginia .....	Wheeling .....	38,880

Total, 73 plants. (Population given in round numbers, from the census figures for 1900)

The following states contain no cities of over 10,000 population having municipal electric light plants. Alabama, Arizona, Colorado, Delaware, Georgia, Idaho, Indian Territory, Louisiana, Minnesota, Mississippi, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, Utah, Wisconsin and Wyoming.

### Street and commercial lighting

City plants are furnishing commercial as well as street lighting. From the following table it is seen that one-half of the municipal stations in 1902 furnished commercial arc lighting while more than seven-eighths furnished commercial incandescent lighting; four-sevenths of the private plants furnished commercial arc lighting and practically all (fifty-five-fifty-sixths) furnished commercial incandescent lighting. In 1902 all but 77 of the 815

municipal plants sold current to private consumers. (The total number of private stations was 2805, and of municipal stations 815):

CHARACTER OF SERVICE (1902) (table 7).<sup>1</sup>

	Private stations	Municipal stations	Total.
<b>Arc lighting</b>			
Commercial or other private ..	1,667	353	2,020
Public (street, etc.).....	1,810	712	2,522
<b>Incandescent:</b>			
Commercial or other private ..	2,752	732	3,484
Public .....	1,889	602	2,491
<b>Motor power—stationary.....</b>	975	118	1,093
Electric Ry .....	157	2	159
<b>All other service.....</b>	152	9	161

<sup>1</sup> U. S. Census office. Report on central electric light and power stations, 1902 p. 11.

### Investment, income and prices

**Investment.** The amount invested in private plants has been and is much greater than that in municipal plants. The figures given for 1899 by Carroll D. Wright were in round numbers, \$265,-182,000 invested in private electric light plants, compared with \$12,902,000 in municipal plants; the value of the electricity sold, was, for private plants, \$56,490,000 and for municipal plants, \$3,531,000. That is, the investment in municipal plants in 1899 was about one-twentieth of the investment in private plants, while the product was a little less than one-seventeenth. In 1902, the Census bureau reported an investment (cost of construction and equipment) of \$482,700,000 in round numbers for private plants, and \$22,000,000 for

municipal plants; with a gross income of \$78,700,-000 for private and \$6,965,000 for municipal plants. That is, in 1902 the amount invested in municipal plants was still about one-twentieth while the value of the product was about one-eleventh.

INCOME (ROUND NUMBERS) 1902 (table 8)<sup>1</sup>

	Private stations	Municipal stations
From arc lighting.....	\$22,091,000	\$3,389,000
From incandescent .....	41,336,000	3,360,000
From all other electric service.....	13,960,000	88,000
From all other sources .....	1,585,000	128,000

<sup>1</sup>U. S. Census office. Special report on central electric light and power stations, 1902, p. 110.

Private stations receive more from incandescent than from arc lighting; municipal stations from each about the same. "All other electric service" is current for the operation of stationary and railway motors.

The next table is a comparison of the public or street lighting with the commercial (store or house) lighting:

NUMBER OF LAMPS IN SERVICE, TOTAL INCOME, AND AVERAGE INCOME PER LAMP, 1902 (table 9)<sup>1</sup>

	ARC LAMPS		INCANDESCENT LAMPS	
	Commercial or other private service	Public service	Commercial or other private service	Public service
Private stations:				
Number of lamps...	168,180	166,723	16,243,853	372,740
Total income...	\$8,220,154	\$13,871,616	\$39,039,927	\$2,257,927
Average income per lamp...	\$48.88	\$83.20	\$2.40	\$6.06
Municipal stations:				
Number of lamps...	5,793	45,002	1,494,531	82,920
Total income...	\$240,166	\$3,149,079	\$2,868,296	\$491,322
Average income per lamp...	\$41.46	\$69.98	\$1.92	\$5.93

<sup>1</sup>U. S. Census office. Special report on central electric light and power stations, 1902, p. 29.

<sup>2</sup>Value estimated according to prevailing rates.

A careful perusal of these figures discloses the fact that private stations furnish a few more commercial arcs than public (street) arcs; while municipal stations furnish eight times as many public arcs as commercial arcs. Incandescent lighting, both by private and by municipal plants, is overwhelmingly commercial; but private stations furnish one-fortythird as many street incandescents as store and house incandescents, while municipal plants furnish one-eighteenth.

Street arcs pay private as well as municipal plants much more per arc than commercial arcs; the same is true of incandescent service.

## FOREIGN COUNTRIES

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### Canada

There are 80 municipal electric light plants in Canada.<sup>1</sup> They are located in the provinces as follows:

British Columbia .....	6
Manitoba .....	1
New Brunswick .....	5
N. W. Territories .....	5
Nova Scotia .....	6
Ontario .....	50
Prince Edward Island .....	2
Quebec .....	5
<b>Total in Canada .....</b>	<b>80</b>

<sup>1</sup>Central station list, Mar. 1906.

Most of the cities have a population of less than 10,000 except St. Thomas, Guelph, Glace Bay and Kingston.

### England

In England, about two thirds of the electric light plants are owned by municipalities. The following table shows at a glance the comparative situation of water, gas and electric plants. The figures are in most cases for 1903; Scotland and Ireland are not included:

ENGLISH ELECTRIC LIGHT PLANTS, 1903<sup>1</sup> (table 10)

	PUBLIC PLANTS		PRIVATE PLANTS	
	No. Plants	Total Capital	No. Plants	Total Capital
Water .....	1,045	\$330,914,000	251	\$197,851,000
Gas .....	256	173,919,000	454	375,348,000
Electricity .....	334	155,728,000	174	133,828,000
Street railways.....	142	119,061,000	154	83,660,000
Total .....	1,777	\$779,622,500	1,033	\$790,688,724

<sup>1</sup> U. S. Labor bureau. Bulletin, Jan. 1906, p. 5.

There are 481 municipal electric plants and 297 private electric plants in the whole United Kingdom.<sup>1</sup> Liverpool, Leeds, Sheffield, Birmingham, Southampton and Glasgow are some of the larger cities in the list. Municipal ownership has found much favor with the citizens of England, Scotland and Ireland.

<sup>1</sup> Municipal yearbook of the United Kingdom, 1906, p. 429.



## WISCONSIN

In Wisconsin, municipal electric lighting began in 1889, at which time there were 30 private plants. Since then the growth has been as follows:

GROWTH OF MUNICIPAL ELECTRIC LIGHT PLANTS IN WISCONSIN (table 11)<sup>1</sup>

Year	No. of new municipal plants	Total municipal plants	Total private plants
1889.....	1	1	30
1890.....	1	2	34
1892.....	2	4	47
1893.....	2	6	52
1894.....	2	8	65
1895.....	1	9	69
1897.....	3	12	88
1898.....	2	14	102
1899.....	3	17	108
1900.....	4	21	112
1901.....	3	24	115
1902.....	4	28	124
1903.....	4		
1904.....	4		
1905, Sept. <sup>2</sup> .....		40	115
1906, Mar. <sup>2</sup> .....	6	46	123

<sup>1</sup> U. S. Census office. Special report on central electric light and power stations, 1902. p. 106.

<sup>2</sup> Central station list, Sept. 1905 and Mar. 1906.

There are in Wisconsin (March, 1906) 123 private and 46 municipal electric light plants; 38 of the 123 private plants and 13 of the 46 municipal plants are in places of less than one thousand population.

### Cities and villages having municipal plants

The cities and villages in Wisconsin that have municipal electric light plants are as follows:

MUNICIPAL ELECTRIC LIGHT PLANTS IN WISCONSIN (table 12)

City or Village.	Pop. 1905	Date begun operation	Cost of plant	No. of arcs	No. of incandescent lamps
Algoma .....	2,010	1903	\$40,000	24	1,200
Arcadia .....	1,315	.....	21,000	8	1,500
Barron .....	1,675	1902	15,000	18	1,400
Bayfield <sup>1</sup> .....	2,675	1889	15,000	20	3,000
Black River Falls .....	1,915	.....	12,000	10	1,500
Blair .....	461	1905	.....	6	600
Blanchardville .....	640	1903	6,000	8	450
Boscobel .....	1,635	1899	18,000	3	2,600
Cedarburg .....	1,680	1905	.....	.....	.....
Clintonville .....	1,840	1902	12,000	22	2,000
Colby .....	850	1903	16,000	15	450
Columbus <sup>1</sup> .....	2,388	.....	20,000	54	4,800
Cumberland .....	1,495	.....	.....	.....	.....
Elkhorn .....	1,820	.....	17,500	40	2,300
Elroy .....	2,011	.....	.....	.....	.....
Evausville .....	1,960	.....	16,000	11	1,100
Fennimore .....	1,053	1904	23,000	21	300
Florence .....	1,940	.....	8,000	.....	1,500
Fort Atkinson <sup>1</sup> .....	3,390	1890	35,000	34	4,000
Grantsburg .....	612	1905	.....	4	900
Greenwood .....	687	1906	.....	.....	.....
Independence .....	663	1906	.....	.....	.....
Hudson <sup>2</sup> .....	3,220	.....	.....	92	8,000
Jefferson .....	2,572	.....	27,000	.....	2,500
Kilbourn .....	1,090	.....	15,000	20	600
Marshfield <sup>1</sup> .....	6,036	.....	.....	60	7,000
Mazomanie <sup>1</sup> .....	860	1894	12,000	.....	600
Monticello .....	610	1904	8,000	.....	.....
New Glarus .....	655	.....	14,000	8	500
New London <sup>1</sup> .....	3,000	1905	20,000	51	4,000
Oconomowoc <sup>1</sup> .....	3,010	1891	42,000	50	6,000
Plymouth <sup>1</sup> .....	2,675	1902	70,000	67	4,700
Princeton .....	1,425	1905	13,000	29	1,100
Reedsburg <sup>1</sup> .....	2,575	.....	17,000	25	9,000
Rice Lake .....	3,410	1892	40,000	27	1,700
Richland Center .....	2,635	.....	25,000	.....	2,000
River Falls .....	2,300	1900	35,000	36	8,000
Sauk City .....	750	1903	9,000	8	450
Shawano .....	2,445	.....	30,000	30	1,500
Spring Green .....	770	1904	6,000	5	730
Stoughton <sup>1</sup> .....	4,240	1904	25,000	23	3,000
Sturgeon Bay .....	4,640	.....	19,000	43	1,800
Thorp .....	875	1901	10,000	27	800
Two Rivers <sup>1</sup> .....	4,602	1902	70,000	58	4,100
Waupun .....	3,110	1900	20,000	46	4,500
Whitehall .....	700	1898	.....	8	1,000

<sup>1</sup>Operated with water works.<sup>2</sup>Leased to a private company.









1906

WISCONSIN FREE LIBRARY COMMISSION  
LEGISLATIVE KNOWLEDGE DEPARTMENT  
COMPARATIVE LEGISLATION BULLETIN  
NO. 4

# TRUST COMPANY RESERVES

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MARGARET A. SCHAFFNER

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WARREN WISCONSIN  
MAY 1906

## INTRODUCTION

In the light of the recent agitation in New York over trust company reserves and of the doubts expressed as to the meaning of the Wisconsin trust company law, this bulletin containing a summary of all the laws relating to trust company reserves will be found suggestive and useful to business men and legislators.

CHARLES MCCARTHY,  
*Legislative Reference Department.*



# TRUST COMPANY RESERVES

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MARGARET A. SCHAFFNER

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COMPARATIVE LEGISLATION BULLETIN—No 6 — MAY 1906  
Prepared with the co-operation of the Political Science Department of the University of Wisconsin

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1906

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RIDGELEY, W. B. Government control of banks and trust companies. Annals of the American academy, July, 1904, vol. 24, p. 15-267.

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An interesting discussion of the organization of trust companies on the Continent.

WHITE, HORACE. Trust companies and the clearing house. Nation, Feb. 12, 1903, vol. 76, p. 126.

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A convenient compilation giving contemporary law in classified form.

## KINDS OF DEPOSITS

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The changes in our law with respect to trust company reserves reflect the changes which have come about in the character of trust company deposits. As the scope of the trust company has broadened from a strictly fiduciary business until it has come to include a variety of activities similar to those carried on by commercial banks, its deposits have likewise changed in character.

Deposits against which reserves are required may be grouped according to their general nature under:

1. fiduciary deposits, or deposits held in trust; and
2. general banking deposits.

### FIDUCIARY DEPOSITS

The "old line" trust company exists for the purpose of caring for the trustee business. The deposits which it receives are usually not subject to check and it generally requires prior notice for the withdrawal of funds. Many states require trust companies to deposit securities with state officials as a guarantee for the proper execution of trusts; such general deposit

being accepted in lieu of special bond or security in the case of each trust.

For typical laws requiring such deposits compare: Ill. Rev. St. 1905, c. 32, sec. 134-6; Mich. Comp. Laws, 1897, sec. 6157; Tex. Civ. St. 1897, art. 642; Wis. Rev. St. 1898, sec. 1791e.

Certain states also provide that trust funds and accounts must be kept separate from all other funds and accounts of trust companies.

See Ohio, Ann. St. 1906, sec. 3821b for a typical provision; also compare Ky. St. 1903, sec. 612a.

#### GENERAL BANKING DEPOSITS

The reserves required of trust companies against their general banking deposits frequently vary with the form of the liability. Certain states require a given percentage of reserve against all deposits without reference to their form. Others require a reserve only against certain prescribed liabilities.

#### **Demand deposits**

A majority of the states<sup>1</sup> which require reserves provide that the reserve is to be held against demand deposits.

Among the states which require reserves of demand deposits only are: Ala., Id., La., Mo., N. J., Tex. and W. Va.

Other states require a reserve of deposits payable on demand or within ten days. See: Me., Mass. and Ohio.

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<sup>1</sup> See laws of the states in alphabetic order under *Regulations*.

*Deposits subject to check.* In certain states trust companies are not permitted to open or carry current accounts against which checks may be drawn.

An opinion of the Attorney General of Wisconsin given in 1905, holds that funds received by trust companies are not subject to check.

The Attorney General of Iowa has recently given a similar opinion.

*Demand certificates.* In 1900 the United States Circuit Court held that, in the absence of statutory provisions on the subject, a trust company authorized to receive money on deposit has lawful authority to issue certificates of deposit in the usual form. *Bank of Saginaw v. W. Pa. T. etc. Co.* 105 Fed. 491.

### Time deposits

In some states<sup>1</sup> a reserve of time deposits is also required.

*Time certificates.* Certain states specifically include time certificates among the liabilities against which a reserve is required.

For a typical case see Cal.

*Savings deposits.* The percentage required against savings deposits is frequently less than that against deposits payable on demand or against total deposits.

See the laws of Utah which require from 15 per cent to 20 per cent reserve of demand deposits as compared with a 10 per cent reserve for savings.

See also the laws of Kansas which require a reserve of only 10 per cent of time deposits as compared with 25 per cent of deposits subject to check; and the provisions of South Dakota<sup>1</sup> requiring 10 per cent of time as against 25 per cent of demand deposits.

### **Aggregate deposits**

Quite a number of states<sup>1</sup> require a given percentage of reserve against all deposits of trust companies.

For laws making this requirement see: Conn., Ga., N. M., N. Y., and Wy.

### **Ratio of reserves to deposits**

Recent legislation shows a tendency to require reserves of trust companies but the ratio of reserve required frequently varies with the kind of deposits: in certain states the reserve is based upon total deposits, in others a distinction is drawn between the reserve required for time deposits and those payable on demand, in still others reserves are required of demand deposits only.

## **WHAT CONSTITUTES BANKING**

The laws of the several states show an evident attempt to vary the amount of reserve according to the powers which trust companies are permitted to exercise.

In states where they are limited to strictly fiduciary activities there is usually less concern regarding a reserve than in those states in which they are also permitted to exercise functions usually performed by banks.

Much division of opinion exists not only as to whether trust companies are entitled to do a banking business, but also as to what really constitutes banking. The statutes on this point vary greatly in the



different states, and the court decisions present conflicting conclusions.<sup>2</sup>

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<sup>2</sup> See *State v. Lincoln T. Co.*, 1898, 144 Mo., 562; *Binghampton T. Co. v. Clark*, 1898, 32 N. Y., App. Div., 151; *Venner v. Farmers' L. & T. Co.*, 1900, 54 N. Y., App. Div., 271; and *Bank of Saginaw v. W. Pa. T. etc. Co.*, 1900, 105 Fed., 491.

Also see 3 *Am. & Eng. Enc. of Law* (2d ed.), 789-91; 5 *Cyc. of Law & Proc.* 431-2; and *Am. Dig.* 1905B, col. 471.

## REGULATIONS

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The wide range of activities which trust companies undertake in the United States has made the question of reserves for their funds of greater significance in this country than in any other part of the world.

### Foreign countries

In England strictly fiduciary business is still largely entrusted to individuals, and that which is done by banks is incidental to their general business. A few of the largest American trust companies have established branches in London and in some other foreign cities, but reports from these branches show that their operations are limited mainly to the issue of letters of credit and to the purchase and sale of exchange and of securities designed for investment.

In Germany<sup>3</sup> and Austria the so called mortgage banks undertake some classes of work commonly done by trust companies in the United States, but their fiduciary activities are limited. Within recent years cor-

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<sup>3</sup> For general laws applying to trust companies see Bürgerl. Gesetz Buch, sec. 1189; also the Laws of July 18, and of Dec. 4, 1899.

porations exercising the usual trust company functions have sprung up in Germany, and certain American companies have established branches which do an active trust company business.

Among the institutions in France somewhat analogous to our trust companies may be included the Société Générale, the Crédit Lyonnais, and especially the Crédit Foncier.

In New Zealand<sup>4</sup> there has been a significant development in the establishment of the Public Trust Office, which was made a department of the government in 1872. Good faith in its administration is guaranteed by statute and the colony is pledged to maintain the integrity of funds placed within its care.<sup>5</sup>

These illustrations of the business of trust companies in foreign countries indicate that their most conspicuous function, apart from strictly fiduciary activities, is to handle interest bearing accounts, time certificates of deposit, debentures, and other long time funds of the community. Regulations with reference to their funds do not, therefore, have as great significance as if they performed the variety of functions undertaken by trust companies in the United States.

## United States

*Alabama.* Laws, 1903, no. 522, secs. 5, 17. Requires a reserve of 15% of demand deposits,  $\frac{1}{2}$  of

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<sup>4</sup> See the Public Trust Office Consolidation Act, New Zealand, Statutes, 1894, Act, No. 50; also the amendments of 1895, Act, No. 61, and of 1901, Act, No. 55.

<sup>5</sup> For a typical regulation relating to Public Trustees in Australia, see South Australia, Acts, 1904, No. 854.

which may consist of balances due by banks and bankers.

*Arizona.* No provisions requiring a reserve.

*Arkansas.* No provisions requiring a reserve.

*California.* Laws, 1905, c. 296, sec. 24. If a trust company does a banking business, the general banking laws apply. Requires a cash reserve of at least 20% of its demand or immediate liabilities and time certificates of deposit in all places having a population of 200,000 and over; elsewhere the reserve required must be 15%. One-half of such cash reserve may consist of money on deposit, subject to call, with any solvent bank or trust company. Cash includes specie, national bank notes, legal tender notes, and all the paper obligations of the United States circulating as money, and exchanges for clearing house associations.

*Colorado.* No provisions requiring a reserve.<sup>6</sup>

*Connecticut.* Gen. St. 1902, sec. 3400. Requires a reserve fund of 15% of its aggregate deposits. Of this reserve, not less than  $\frac{1}{10}$  is to consist of gold and silver coin, the demand obligations of the United States or national bank currency, and is to be held by

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<sup>6</sup> See Ann. St. Rev. Supp. 1896, vol. 3, sec. 544, providing that trust companies may not transact a banking business, but the fact that they are permitted to receive demand deposits and to discount paper indicates that the line between that which is, and that which is not, strictly banking business has not been closely drawn.

such bank or trust company in its banking office. The remainder may consist of balances, subject to demand draft with approved reserve agents, and of railroad bonds which are legal investments for saving banks of the state. The railroad bonds are at no time to exceed at par value  $\frac{1}{4}$  of the total reserve.

*Delaware.* No provisions requiring a reserve.

*District of Columbia.*<sup>7</sup> No provisions requiring a reserve.

*Florida.* No provisions requiring a reserve.

*Georgia.* Code, 1895, sec. 1941, Supp. 1901, sec. 6462. Trust companies doing a banking business are required to keep a cash reserve equal to at least 25% of aggregate deposits.

*Hawaii.* No provisions requiring a reserve.

*Idaho.* Laws, 1905, p. 175. Requires a reserve in available funds of not less than 15% of demand liabilities but  $\frac{1}{2}$  of such sum may consist of balances due from solvent banks.

*Illinois.* Rev. St. 1905, c. 32, secs. 129-47. There is no provision requiring a reserve, but it is the practice of the State Auditor to require state banks, located in Chicago, exercising trust company powers to

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<sup>7</sup> Trust companies are organized under Act of Cong. Oct. 1, 1890.

carry a cash reserve of not less than 25% of their commercial deposits. A less reserve is required of contract or savings deposits. Institutions elsewhere are required to maintain a reserve of 15% of commercial deposits.

*Indiana.* No provisions requiring a reserve.

*Iowa.* Code, 1897, secs. 1867, 1889 as amended by Laws, 1904, c. 65. Provides that trust companies organized under the banking laws may receive time deposits. The reserve required of companies thus organized is 15% of total deposits in places having a population of 3,000 or over, and 10% elsewhere;  $\frac{3}{4}$  of the reserve may be kept on deposit subject to call with other state or national banks.

*Kansas.* Gen. St. 1905, sec. 1528. Requires a reserve for trust companies equal to 25% of deposits subject to check and 10% of time deposits, in the same manner and subject to the same rules as state banks. In lieu of deposits in banks, the legal reserve may include United States bonds and demand loans secured by United States, state, county, or municipal bonds of the cash value of such loans.

*Kentucky.* St. 1903, secs. 584, 612a. Trust companies doing banking business are required to reserve at least 15% of total deposits and in cities of over 50,000 population, at least 25%. Of this reserve  $\frac{1}{3}$  is to be in money and the balance in funds payable on demand from other banks.

*Louisiana.* Laws, 1902, no. 45. Requires a reserve in lawful money of the United States or in cash due from other banks or bankers equal to 25% of the aggregate amount of its demand deposits, 8% of which is to be kept in cash. The remainder may be lawful money of the United States, cash due from other banks, bills of exchange, discounted paper maturing within not more than one year, bonds, stocks, or securities of the United States, of any state of the United States, of the municipalities, or corporations, public or private, thereof, or of the levee boards of Louisiana; provided that deposits, made in a savings bank or in a savings department of a bank also doing a general banking and trust banking business, which are made on the condition that they may not be withdrawn except on notice, are not to be considered demand deposits within the meaning of this section.

*Maine.* Rev. St. 1903, c. 48, sec. 80, as amended by Laws, 1905, c. 15. Requires a cash reserve equal to at least 15% of the aggregate amount of its deposits subject to withdrawal on demand or within ten days. In lieu of such cash reserve  $\frac{2}{3}$  of the 15% may consist of balances payable on demand due from approved banks and trust companies and  $\frac{1}{3}$  may consist of bonds of the United States, of the District of Columbia, and of certain designated states.

*Maryland.* Trust companies operate under charters granted by special acts of the Legislature and any limitations as to reserves are to be found in the separate charters.

*Massachusetts.* Laws, 1904, c. 374, as amended by Laws, 1905, c. 331. Requires a reserve of 15% of the aggregate amount of deposits which are subject to withdrawal upon demand or within ten days. Not less than  $\frac{1}{3}$  of such reserve is to consist either of lawful money of the United States, gold certificates, silver certificates, or notes and bills issued by any lawfully organized national banking association, and not less than  $\frac{1}{2}$  of the remainder of such reserve may consist of balances, payable on demand, due from approved national banking associations, and the remainder may consist of bonds of the United States or of the commonwealth computed at their par value, which are the absolute property of such corporation.

*Michigan.* Comp. Laws, 1897, sec. 6165. Requires a reserve of 20% of matured obligations and money due and payable.  $\frac{3}{4}$  of which may be kept in approved banks or trust companies.

*Minnesota.* No provisions requiring a reserve.

*Mississippi.* No provisions requiring a reserve.

*Missouri.* Rev. St. 1899, secs. 1280, 1304. Requires a reserve equal to at least 15% of the aggregate amount of demand deposits.

*Montana.* Civ. Code, 1895, secs. 584, 590-611. There is no law specifically requiring trust companies to carry a reserve, but it is the practice of the banking department to require the same reserve against trust



company deposits as is required of banks of discount. This reserve must equal at least 20% of immediate liabilities. Of this amount  $\frac{1}{2}$  is to consist of balances due from solvent banks and  $\frac{1}{2}$  is to be held in cash which may include specie, legal tender notes, and all bills of solvent banks.

*Nebraska.* No provisions requiring a reserve.

*Nevada.* No provisions requiring a reserve.

*New Hampshire.* No provisions requiring a reserve.

*New Jersey.*<sup>8</sup> Laws 1899, c. 174, sec. 20. Requires a reserve of at least 15% of all immediate demand liabilities. Of this amount  $\frac{1}{3}$  may consist of balances due from solvent banks or trust companies and  $\frac{2}{3}$  is to be held in cash on hand.

*New Mexico.* Laws, 1903, c. 52, sec. 10. Requires a reserve of at least 15% of the aggregate amount of liabilities not including those liabilities for which bonds of at least \$50,000 must be deposited with the Auditor of the Territory. Of this reserve  $\frac{1}{3}$  may consist of balances due from approved national, state, or territorial banks or trust companies.

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<sup>8</sup> See N. J. Laws, 1899, c. 174, sec. 7, forbidding trust companies to discount commercial paper. However, sec. 10 gives them specific authority to purchase, invest in and sell promissory notes and bills of exchange, and sec. 18 gives them authority to receive deposits subject to check. In reality, therefore, N. J. permits trust companies to do actual banking business.

*New York.* Laws, 1906, c. 337. Requires trust companies having principal place of business in any city with a population of over 800,000, to keep on hand a reserve fund equal to at least 15% of aggregate deposits. The whole of such reserve fund may, and at least  $\frac{1}{3}$  must, consist of either lawful money of the United States, gold certificates, silver certificates, or notes or bills issued by any lawfully organized national banking association;  $\frac{1}{3}$  may consist of bonds, computed at their par value, issued by the United States, New York state or those issued in compliance with law by any city of the first or second class in the state; the balance must consist of money on deposit subject to call, in approved banks or trust companies in the state having a capital of at least \$200,000 or a capital and surplus of \$300,000.

Trust companies having principal place of business in cities of less than 800,000, are required to keep on hand a reserve fund equal to at least 10% of aggregate deposits. The provisions for the composition of the reserve are similar to those for the larger cities except that the percentage is 30 instead of  $33\frac{1}{3}$ .

*North Carolina.* Each trust company is incorporated by special act of the Legislature and any limitations as to reserves are to be found in the separate charters.

*North Dakota.* No provisions requiring a reserve.

*Ohio.* Ann. St. 1906, sec. 3821b. Requires a reserve equal to 15% of demand deposits or those payable within ten days. Of this reserve  $\frac{1}{3}$  may consist

of clearing house certificates representing specie or lawful money,  $\frac{1}{3}$  must consist of bonds of the United States or of Ohio, and the remaining  $\frac{1}{3}$  must be in lawful money of the United States.

*Oklahoma.* No provisions requiring a reserve.

*Oregon.* No provisions requiring a reserve.

*Pennsylvania.*<sup>9</sup> No provision of law requiring a reserve. However, the Banking Department requires a reserve in cash and amounts due from banks of 15% for country companies and approximately 20% for city companies.

*Rhode Island.* Each trust company is incorporated by special act of the Legislature and any limitations as to reserves are to be found in the separate charters.

*South Carolina.* Provisions similar to Rhode Island.

*South Dakota.* Laws, 1905, c. 74. Requires a reserve of cash on hand or on deposit in solvent banks equal to 10% of time deposits and 25% of deposits payable on demand.

*Tennessee.* No provisions requiring a reserve.

*Texas.* Laws, 1905, c. 10. Requires a reserve of

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<sup>9</sup> See Pa. Dig. of Laws, 1903, p. 271, secs. 1-21, prohibiting trust companies from engaging in banking except as authorized. However, they are granted power to receive demand deposits, and to purchase bills of exchange. As the power to purchase commercial paper differs only in form from the power to discount it, trust companies are really permitted to undertake important banking functions.

cash on hand and cash due from approved banks and trust companies equal to at least 25% of the aggregate amount of demand deposits; 10% of such reserve is to be actual cash.

*Utah.* Rev. St. 1898, secs. 378, 424. Requires a reserve of demand deposits equal to 20% in cities of 25,000 or over and 15% elsewhere; also provides a reserve of 10% for savings deposits.

*Vermont.* There is no provision of law regarding a reserve.<sup>10</sup>

*Virginia.* Trust companies are incorporated by the State Corporation Commission and any limitations as to reserves are to be found in their separate charters.

*Washington.* No provisions requiring a reserve.

*West Virginia.* Laws, 1901, c. 83, as amended by Laws, 1905, c. 45. Requires a reserve equal to at least 15% of demand deposits. In lieu of lawful money,  $\frac{3}{4}$  of such reserve may consist of balances payable on demand due from approved banks.

*Wisconsin.* No provisions requiring a reserve.

*Wyoming.* Rev. St. 1899, sec. 3132 as amended by Laws, 1903, c. 50. Requires a reserve of at least 25% of liabilities to depositors. This reserve is to consist of cash on hand or on deposit subject to call with national or state banks approved as reserve agents.

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<sup>10</sup> However, see Vermont St., 1894, sec. 4106, providing that deposits not exceeding in the aggregate 20% of a company's assets may be made in designated banks or trust companies.

## MAINTENANCE OF THE RESERVE

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### PROVISIONS REQUIRING MAINTENANCE

The provisions requiring maintenance of a reserve may be grouped under: 1. statutory requirements; 2. regulations of state department,—usually the banking department; 3. limitations in charters granted by special acts of the legislature.

#### Statutory requirements

A reserve is definitely required by law in about half of our states.<sup>11</sup>

For typical provisions compare the laws of the following states: Ala., Cal., Conn., Ga., Id., Kan., Ky., La., Me., Mass., Mich., Mo., N. J., N. M., N. Y., Ohio, S. D., Tex., Ut., W. Va., Wy.

#### Regulations of state departments

In several states where there are no statutory provisions, reserves are required by the state banking department, by the state auditor, or by other officials entrusted with the supervision of trust companies.

Compare the regulations imposed in: Ill., Mont. and Pa.

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<sup>11</sup> See laws of states in alphabetic order under *Regulations*.

### Limitations in charters

In states where trust companies are incorporated only by special act of the legislature, such limitations as may exist with regard to reserves are to be found in the separate charters.

For states illustrating this method compare: Md., N. C., R. I., and S. C. Also see Va. for companies incorporated by the State Corporation Commission.

### PENALTIES FOR IMPAIRMENT

Penalties for failure to maintain the reserve required by law may be grouped under: 1. suspension of loans and discounts; 2. prohibition of dividends; 3. tax on impairment of reserves; and 4. declaration of insolvency.

### Suspension of loans and discounts

One of the most common methods of compelling maintenance of the reserve is to prohibit the making of new loans and discounts until the reserve has been restored to the required amount.

The New York<sup>12</sup> law of 1906 which is typical of this method provides that if the money reserve of any trust company is less than the amount required by law such trust company is not to increase its liability by making any new loans or discounts otherwise than by discounting bills of exchange payable on sight until the full amount of its lawful money reserve has been restored. The superintendent of banks is to notify any trust company whose lawful reserve is below the amount required, that it must make good such

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<sup>12</sup> Laws, 1906, c. 337.

reserve, and if it fails to do so within thirty days it is to be deemed insolvent and may be proceeded against as an insolvent moneyed corporation.

For similar provisions see: Conn. Gen. St. 1902, sec. 3400; Me. Rev. St. 1903, c. 48, sec. 80; N. J. Laws, 1899, c. 174, sec. 20; N. M. Laws, 1903, c. 52; Ohio, Ann. St. 1906, sec. 3821b; Tex. Laws, 1905, c. 10; W. Va. Laws, 1901, c. 83 as amended by Laws, 1905, c. 45.

## Prohibition of dividends

Another common requirement provides that trust companies shall not make dividends of profits until the reserve is restored.

For provisions on this point see: Conn. Gen. St. 1902, sec. 3400; N. M. Laws, 1903, c. 52; N. Y. Laws, 1906, c. 337; Ohio, Ann. St. 1906, sec. 3821b; W. Va. Laws, 1901, c. 83 as amended by Laws, 1905, c. 45.

## Tax on impairment of reserves

A tax on impairment of reserves has been urged as a substitute for the suspension of loans and discounts. Placing a tax on deficiencies, sufficiently high to make it unprofitable for a bank to allow the impairment to continue, would, it is maintained, provide greater elasticity with sufficient rigidity for safety. This method for maintaining reserves was recently urged before the New York legislature.<sup>13</sup>

*Fines for impairment.* Certain states impose forfeitures or fines in case of impairment of reserves below the point required.

Alabama, Laws, 1903, no. 522, provides for forfeiture in case of impairment of reserves in banks or trust companies as follows: whenever it appears to the State Treasurer that

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<sup>13</sup> See argument by Theodore Gilman submitted to the Committee on Banks, Assembly Chamber, Albany, N. Y., Mar. 1, 1904.

the reserve has fallen below the amount prescribed, he is to give notification that it is to be made good, and in case the company fails to restore the reserve within thirty days, it is to forfeit \$25 to the State for each day thereafter until the reserve is restored.

The penalties imposed for impairment of reserves, by the Montana Civ. Code, 1895, sec. 584, relate specifically to banks, but it is the practice of the Banking Department to apply the provisions to trust companies. The provisions require, that whenever the available funds on hand do not equal the amount provided for by law the State Examiner must require the company to make good the reserve, and if it fails to do so within thirty days after notice, it is to be deemed guilty of a misdemeanor, and upon conviction is to be punished by a fine of not less than \$100 nor more than \$500.

### Declaration of insolvency

The power to declare a company insolvent, if it continues in its refusal to restore the reserve, is usually vested in officials connected with the banking departments in the several states.

Thus the Massachusetts<sup>14</sup> law provides that the Board of Commissioners of Savings Banks may notify any trust company whose reserve is below the amount required to make good such reserve, and if it fails to do so within sixty days the Commissioners may apply to a Justice of the Supreme Judicial Court to appoint one or more receivers to take possession of the property and effects of the company and to close up its business, subject to such directions as may from time to time be prescribed by the court.

See also: Conn. Gen. St. 1902, sec. 3400; Ky. St. 1903, sec. 616; N. M. Laws, 1903, c. 52; N. Y. Laws, 1906, c. 337.

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<sup>14</sup> Laws, 1904, c. 374, sec. 7.







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No. 7

## TAXATION OF TRUST COMPANIES

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MARGARET A. SCHAFFNER

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MADISON WISCONSIN  
JUNE, 1906

## INTRODUCTION

This bulletin is designed to meet the demand of legislators and business men for a condensed statement of the laws relating to the taxation of trust companies.

When they are taxed like banks only a brief reference is given to the banking laws.

This paper does not include any statement of organization or examination fees.

CHARLES McCLARTY,  
*Legislation Reference Department.*

# TAXATION OF TRUST COMPANIES

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MARGARET A. SCHAFFNER

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COMPARATIVE LEGISLATION BULLETIN—No 7—JUNE, 1906

Prepared with the co-operation of the Political Science Department of the University of Wisconsin

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A description of the trustee companies of Australia, Public trust office of New Zealand, and the position of English companies or individuals analagous to these.

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A convenient compilation giving contemporary law in classified form.



# THE BASIS OF TAXATION

Existing laws for the taxation of trust companies vary greatly for the several states.

## TAXES BASED UPON THE NATURE OF THE PROPERTY

The different taxes employed may be grouped according to the nature of the property right,<sup>1</sup> which is taken as the basis of assessment. On this basis taxes are levied upon: 1. the volume of business; 2. annual earnings; 3. special kinds of property.

### VOLUME OF BUSINESS

Taxes based upon the volume of business are levied upon: 1. the amount of corporate investment; 2. general deposits; 3. property held in trust.

#### **Amount of corporate investment**

A number of states<sup>2</sup> tax trust companies upon the amount of the corporate investment including capital stock, surplus, and undivided profits.

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<sup>1</sup>The following statement of trust company taxation aims to analyze and classify the taxes which exist under contemporary law, it does not aim to give a complete classification of possible taxes.

<sup>2</sup> See states in alphabetic order under *Laws*.

*Capital stock.* Taxation based upon the amount of capital stock is commonly found in our older states.

For typical cases see laws of: Conn., Md., Mass., Mich., N. H., N. J., N. Y., R. I.

The tax on capital stock is assessed either to the company on the aggregate value of the shares, or to the owners of the separate shares.

*Assessed to company.* The law of N. Y. presents a typical case of assessment to the company.

*Assessed to owner.* The assessment of separate shares to the owners is illustrated in the laws of Mich. and R. I.

*Surplus.* Certain states also tax surplus.

Compare the laws of N. J. and N. Y.

*Undivided profits.* Others also include undivided profits.

For a plain statement of law on this point, see N. Y.

*Special provisions for real estate.* Since it is generally desirable to assess real estate separately for local purposes, a majority of the states have made provision for deducting the assessed value of the real property from the aggregate valuation of the capital stock.

For typical laws compare: Conn., Mich., N. J., N. Y., R. I.

### General deposits

A tax upon the deposits of trust companies is imposed in a number of states.

*Aggregate deposits.* For a tax upon aggregate general deposits, see the laws of R. I. Also compare the laws of Vt. which place a tax upon the average amount of deposits after providing for certain deductions.

*Deposits upon interest.* Typical illustrations of the taxation of deposits upon interest are found in the laws of Mass. and of N. H.

### Property held in trust

Tax provisions relating to property held in trust, generally require trust companies to give a detailed report of all securities and investments held by them in order to subject such property to taxation.

For typical provisions, see the laws of Mass. taxing personal property held in trust. Also compare the laws of Md. and of Vt. for illustrations of the taxation of securities and investments.

### ANNUAL EARNINGS

Taxes based upon the earnings of trust companies have not been as generally employed as those based upon volume of business. However, existing taxes levied according to earnings are placed upon: 1. gross earnings; 2. gross amount of premiums; 3. net income.

#### Gross earnings

Recent legislation has placed a tax upon gross earnings in several states.

Compare the laws of the Dist. of Columbia for a  $1\frac{1}{2}$  per cent. tax on gross earnings and the laws of Md. for a  $2\frac{1}{2}$  per cent. tax on gross receipts.

#### Gross amount of premiums

Another method of reaching earnings is found in the tax on the gross amount of premiums.

For typical cases compare the laws of Mich. and of Ga.

**Net income**

Taxes based upon the net income of trust companies are sometimes employed to supplement other taxation.

The Wis. law as amended in 1905, c. 442 illustrates this method.

**SPECIAL KINDS OF PROPERTY**

In certain cases, taxes are levied upon the kinds of property held by trust companies without any reference to the volume of their business or the amount of their annual earnings. From this standpoint, taxes may be roughly grouped according as they are levied upon: 1. tangible assets; 2. franchises.

**Tangible assets**

The method of taxing trust companies upon their tangible assets exclusively has been quite generally supplemented in order to secure an adequate basis of assessment.

A typical case of taxation upon assets is found in Miss., Code, 1892, secs. 3749-58.

**Franchises**

*Right to do business.* A license fee for the privilege of conducting a corporate business is sometimes levied in a lump sum without any attempt at definite valuation of the property.

See the laws of Wis. for a typical provision.

*Value of franchise.* The value of the corporate franchise is made the basis of assessment in a number of recent laws.

For different methods of estimating the value of the franchise, see the laws of Mass. and of N. Y.

## TAXES BASED UPON THE NATURE OF THE CORPORATION

The assessment of trust companies as corporate bodies is provided for under the following systems: 1. general corporation taxation; 2. bank taxation; 3. trust company taxation.

### General corporation taxation

The general provisions for the taxation of corporations apply in a number of states.

See the laws of: Minn., Miss., Nev., N. D., Okla., Ore., Pa., S. D.

### Bank taxation

In more than half of our states taxation is the same as for banks.

Compare the laws of: Ala., Ariz., Ark., Cal., Col., Del., Fla., Id., Ind., Kan., Ky., La., Me., Mo., Mont., Neb., N. M., N. C., Ohio, S. C., Tenn., Tex., Ut., Va., Wash., W. Va., Wy.

### Trust company taxation

About one fourth of our states have special provisions for the taxation of trust companies.

For leading provisions compare the laws of: Conn., D. C., Md., Mass., Mich., N. H., N. J., N. Y., R. I., Vt., Wis.

## LAWS

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### Foreign countries

No important laws for the special taxation of trust companies have been developed in foreign countries.

### United States

*Alabama.* Taxation the same as for banks. For tax provisions see Const. 1901, secs. 217, 255; Code, 1896, sec. 3911, subd. 8; sec. 4122, subd. 55; Laws, 1896-7, no. 659, sec. 36.

*Arizona.* Taxation the same as for banks. For tax provision see Rev. St. 1901, secs. 3837-9.

*Arkansas.* Taxation the same as for banks. For tax provisions see Dig. of St. 1904, secs. 6919-28.

*California.* Taxation the same as for banks other than national. For tax provisions see Const. 1879, art. 13, sec. 1; Pol. Code, 1903, sec. 3608; Laws, 1905, c. 386.

*Colorado.* Taxation the same as for banks. For tax provisions see Ann. St. Supp. 1896, sec. 3810-3810b.

*Connecticut.* Gen. St. 1902, sec. 2328, 2331 as amended by Laws, 1903, c. 204 and by Laws, 1905, c. 54. The state tax is 1% of the market value of the stock less the local tax on the real estate.

*Delaware.* Taxation the same as for banks. For tax provisions see Rev. Code, 1893, p. 54; Laws, 1897, c. 381.

*District of Columbia.* Act of Cong. Oct. 1st, 1890, U. S. St. at L. vol. 26, p. 629. Real estate is taxed locally. There is also a 1½% tax on gross earnings, and this is in lieu of personal taxes. Shares are not taxed.

*Florida.* Taxation the same as for banks. For tax provisions see Rev. St. 1892, sec. 336, subd. 11.

*Georgia.* Tax provisions for banks apply: see Const. 1877, art. 7, sec. 2; Laws, 1898, p. 78. In addition there is a 1% tax on all premiums: see Laws, 1900, p. 28.

*Idaho.* Taxation the same as for banks. For tax provisions see Const. 1889, art. 7, sec. 8; Pol. Code, 1901, sec. 1335.

*Illinois.* Trust companies organized under the general incorporation laws are taxed the same as other corporations thus organized. For tax provisions see Rev. St. 1905, c. 120, secs. 1, 3, 4, 32-4.

State banks complying with the requirements made of trust companies as to the deposit of securities with the state are authorized to accept and execute trusts.

When such deposit has been made the bank becomes a trust company as well as a banking company, and such companies are assessed the same as state and national banks. For provisions see Rev. St. 1905, c. 120, secs. 13, 35-9.

*Indiana.* Taxation the same as for banks. For tax provision see Const. 1851, art. 10, sec. 1; Ann. St. 1901, secs. 8411, 8469-76; Supp. 1905, secs. 8421, 8469-74.

*Iowa.* Trust companies are taxed under the provisions for the taxation of banks and of corporation stocks. See Const. 1857, art. 8, sec. 2, annotations; Code, 1897, sec. 1322 as amended by Laws, 1906, c. 50; Code, secs. 1323-25, 1327.

*Kansas.* Taxation the same as for banks. For tax provisions see Const. 1859, art. 11, sec. 1-2; Gen. St. 1905, secs. 8276-8.

*Kentucky.* Taxation the same as for banks. For tax provisions see Const. 1891, sec. 174; St. 1903, secs. 4092-92b.

*Louisiana.* Taxation the same as for banks. For tax provisions see Const. 1898, art. 228-9; Rev. Laws, 1904, sec. 307.

*Maine.* Taxation the same as for banks. For tax provisions see Rev. St. 1903, c. 8, secs. 64-8; Laws, 1905, c. 172.



*Maryland.* Pub. Gen. Laws, 1904, art. 81, sec. 138 as amended by Laws, 1906, c. 84; art. 81, secs. 148-60. Trust companies are taxed upon their capital stock for state, county and municipal purposes. In no case is the aggregate amount of stock to be valued at less than the full value of the real estate and chattels, real or personal, belonging to the company.

art. 81, sec. 22 as amended by Laws, 1906, c. 404, fixes the rate of taxation on capital stock for state purposes at 16¢ per \$100.

art. 81, sec. 164, as amended by Laws 1906, c. 712. An additional state tax of  $2\frac{1}{2}\%$  is levied upon the annual gross receipts of trust companies.<sup>3</sup>

*Massachusetts.* Rev. Laws, 1902. c. 12. secs. 2-4, 15. Real estate is taxed locally.

c. 14. secs. 35-6. A tax is placed upon all personal property held upon trust which would be liable to taxation if held by any other trustee residing in the commonwealth. A tax is also placed upon all deposits held upon interest, or for investment, other than those held in trust or subject to withdrawal upon demand or within ten days.

secs. 37-40. A further tax is placed upon the corporate franchises of trust companies. The value of the franchise is determined as follows: the tax commissioner is required to ascertain the true market value of the shares of capital stock, and is to estimate

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<sup>3</sup> See Pub. Gen. Laws, 1904, art. 81, sec. 153 for provisions requiring trust companies to give a detailed report to the state tax commissioners of all securities and investments held by them in trust or otherwise in order to subject such securities and investments to state, county, and municipal taxation.

therefrom the fair cash value which is to be taken as the true value of the corporate franchise. From this amount the value of real estate, assessed locally, is to be deducted. The rate of taxation is determined by making an apportionment of the whole amount of money to be raised by taxation upon property in the commonwealth.

*Michigan.* Comp. Laws, 1897, sec. 6168. Real estate is taxed locally. The residue of capital is taxed as personal property. After deduction of real estate, shares are assessed by local assessors to owner at residence.

Laws, 1897, c. 106. In addition there is a tax of 2% of gross amount of all premiums.

*Minnesota.* Tax provisions for corporations apply. See const. 1857, art. 9, sec. 3; Rev. Laws, 1905, secs. 794, 797-8, 821, 838, 1685. Also see *Nelson v. St. Paul T. I. & T. Co.* 1896, 64 Minn. 101.

*Mississippi.* Tax provisions for corporations apply. See Const. 1890, art. 7, sec. 181; Code, 1892, secs. 3749-58.

*Missouri.* Taxation the same as for banks. For tax provisions see Const. 1875, art. 10, secs. 2, 21; Rev. St. 1899, secs. 5580, 9153.

*Montana.* Taxation the same as for national banks. For tax provisions see Const. 1889, art. 12, secs. 7, 17; Civ. Code, 1895, sec. 611; Pol. Code, 1895, secs. 3691-4.

*Nebraska.* Taxation the same as for banks. For tax provisions see Const. 1875, art. 9, sec. 1; Ann. St. 1903, sec. 10455.

*Nevada.* General tax provisions for corporations apply: see Comp. Laws 1900, secs. 1084-89. In addition, a license tax is placed upon trust companies the same as for banks: see secs. 1188, 1190.

*New Hampshire.* Pub. St. 1901, c. 65, sec. 5. The state tax is  $\frac{3}{4}$  of 1% on the aggregate general deposits drawing interest after deducting the value of all the real estate and of all the mortgage loans on real estate within the state made at a rate not exceeding 5%. In addition there is a tax of 1% on the special deposits and capital stock after deducting the value of all the corporate real estate not already deducted from the general deposits. Such taxes are in lieu of all other taxes against the corporation, their stock holders and their depositors on account of their interests therein.

*New Jersey.* Laws, 1903, c. 208, sec. 18. Each trust company is taxed in the district where its office is located upon the full amount of capital stock paid in and accumulated surplus; its real estate is taxed in the district where it is situated and this assessment is deducted from the assessment on the capital stock. Otherwise the capital stock, property and franchise are exempt from state taxation.

*New Mexico.* Taxation the same as for banks. For tax provisions see Comp. Laws 1897, secs. 257-9, 4025.

*New York.* Laws, 1901, c. 132 as amended by Laws, 1901, c. 535. Every company authorized to do a trust company business is required to pay an annual franchise tax equal to 1% on the amount of its capital stock, surplus, and undivided profits.

Laws, 1896, c. 908, as amended by Laws, 1901, c. 132, and Laws, 1902, c. 172. A stockholder in a trust company is not to be taxed as an individual for such stock.

Laws, 1896, c. 908 as amended by Laws, 1902 c. 171. Real estate is taxed locally.

Laws, 1901, c. 132 and Laws, 1902, c. 172, provide for annual reports by trust companies stating the amount of capital stock, surplus, and undivided profits, and such other data as the comptroller may require.

Laws, 1896, c. 908, as amended by Laws, 1901, c. 118, 132, and 558 make provision for payment of taxes and prescribes penalties for failure to pay.<sup>4</sup>

*North Carolina.* Taxation the same as for banks. For tax provisions see Const. 1876, art. 5, sec. 3; Revisal, 1905, secs. 5162, 5267-70. Trust companies not doing banking business are taxed under the general provisions for the taxation of private corporations: see Revisal, 1905, secs. 5108, 5190.

*North Dakota.* General tax provisions apply: see Code, 1899, sec. 1198.

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<sup>4</sup>For laws holding trust companies liable for the transfer tax upon making a transfer of securities, deposits, or assets of a decedent, see Laws, 1896, c. 908 as amended by Laws, 1905, c. 368.

Also see Laws, 1905, c. 241, as amended by Laws, 1906, c. 414, under which trust companies are required to pay a tax on transfers of stock at the rate of 2c on \$100.

*Ohio.* Taxation the same as for banks. For tax provisions see Const. 1851, art. 12, secs. 2, 3; Ann. St. 1906, secs. 2762-9.

*Oklahoma.* Corporation laws apply. For tax provisions see Rev. & Ann. St. 1903, secs. 5913, 5915, 5928-31.

*Oregon.* Corporation laws apply. For tax provisions see Ann. Codes & St. 1902, secs. 3044, 3049, 3055.

*Pennsylvania.* Corporation tax provisions apply. See Pub. Laws, 1885, p. 193; Pub. Laws, 1889, p. 420 as amended by Pub. Laws, 1891, p. 229; Pub. Laws, 1893, p. 353 and p. 417; Pub. Laws, 1897, p. 292; Pub. Laws, 1899, p. 261. Also see Brightly's Dig. of Laws, 1903, p. 829.

*Rhode Island.* Gen. Laws, 1896, c. 29, sec. 4; c. 45, secs. 1, 10; c. 46, secs. 11-12. The state tax is 40¢ per \$100 of deposits. After deducting value of real estate, shares are taxed to owner at residence by local assessors.

*South Carolina.* Taxation the same as for banks. For tax provisions see Code, 1902, secs. 313-24.

*South Dakota.* Corporation laws apply. For tax provisions see Const. 1889, art. 11, secs. 2-4; Pol. Code, 1903, secs. 2053-55, 2057-59, 2079.

*Tennessee.* Taxation the same as for banks. For tax provisions see Code, 1896, secs. 790-2.

*Texas.* Taxation the same as for banks. For tax provisions see Civ. St. 1897, arts. 5061-4, 5077-80, 5084, 5118, 5243 i-j; Supp. 1904, art. 5049, Annotations; Supp. 1906, arts. 5243 i-j.

*Utah.* Taxation the same as for banks. For tax provisions see Const. 1895, art. 13, secs. 2-3; Rev. St. 1898, secs. 2507-9.

*Vermont.* St. 1894, secs. 368-71; sec. 583 as amended by Laws, 1896, no. 18; and Laws, 1902, no. 20, sec. 40. Every trust company or savings bank and trust company incorporated by the state and doing business therein, is required to pay a state tax assessed at the rate of  $\frac{1}{10}$  of 1% annually, upon the average amount of its deposits including money or securities received as trustee under order of court or otherwise, after deducting therefrom the average amount not exceeding 10% of its assets invested in U. S. government bonds, and also the amount, if any, of individual deposits in excess of \$2,000 each, listed to the depositors in towns of this state wherein such depositors reside. No other tax is to be assessed against deposits or depositors except on individual deposits exceeding in the aggregate \$2,000. Real estate is taxed locally.

*Virginia.* Taxation the same as for banks. For tax provisions see Const. 1902, sec. 182; Code, 1904, sec. 492c as amended by Laws, 1906, c. 291; secs. 1040a-b; Appendix, secs. 17-22.

*Washington.* Taxation same as for banks. For tax provisions see Const. 1889, art. 7, sec. 3; Codes & St. secs. 1677-81; Supp. 1903, sec. 1677.

*West Virginia.* Taxation the same as for banks. For tax provisions see Const. 1872, art. 10, sec. 1; Code, 1899, c. 29, as amended by Laws, 1904, c. 4, secs. 55d and k, 79, 83; by Laws, 1905, c. 35, secs. 55d and k, 79; and by c. 38.

*Wisconsin.* Rev. St. 1898, sec. 1039, and sec. 1222k as amended by Laws, 1905, c. 442. Requires payment of a license fee of \$500 annually, also a tax of 3% on the net income. This license together with the percentage on net income is in lieu of all other taxes except the tax on real estate, which is assessed locally.

*Wyoming.* Taxation the same as for banks. For tax provisions see Rev. St. 1899, secs. 1774, 3128.









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WISCONSIN FREE LIBRARY COMMISSION  
LEGISLATIVE REFERENCE DEPARTMENT  
COMPARATIVE LEGISLATION BULLETIN  
No. 5

## MUNICIPAL GAS LIGHTING

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ERNEST SMITH BRADFORD

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MADISON, WISCONSIN  
SEPTEMBER, 1906

This list of gas plants in Wisconsin and other states, together with bulletin No. 5 on municipal electric lighting, will give the student of public lighting an idea of the extent of municipal ownership in these industries.

CHARLES MCCARTHY  
*Legislative Reference Department*

# MUNICIPAL GAS LIGHTING

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ERNEST SMITH BRADFORD

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COMPARATIVE LEGISLATION BULLETIN—NO 8—SEPTEMBER, 1906,  
Prepared with the co-operation of the Political Science  
Department of the University of Wisconsin

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1906

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**BEMIS, E. W.** Municipal monopolies. New York, 1899.

Contains a chapter on the history and prospects of gas manufacture, p. 587-630.

— Municipal ownership of gas in the United States. American economic association. Publications, 1891, vol. 6, p. 1-151, and appendix.

**BROWN'S** directory of American gas companies. New York, 1906.

Gives technical and commercial data for all gas plants in the United States, Canada and Mexico, 1906; includes private and municipal, natural gas and acetylene and gasoline gas plants.

**JAMES, E. J.** Relation of the municipality to the gas supply. American economic association. Publications, 1886, vol. 1, p. 7-76.

Excellent general discussion.

**LYONS, B. F.** Private vs. municipal ownership. League of American municipalities. Bulletin, Nov. and Dec. 1905, vol. 3, p. 155.

Opposes municipal ownership. December number treats of gas plant at Wheeling, W. Va.

**MUNICIPAL** year book. New York, 1902.

Compiled by M. N. Baker, associate editor of Engineering news. Contains figures only for cities over 3,000 population.

**MUNICIPAL** year book of the United Kingdom. London, 1906. Relation of American municipalities to the gas and electric light service. Annals of the American academy, Jan. 1906, p. 200-33.

A symposium of present conditions in New York, Chicago, St. Louis, Boston, Cleveland, Buffalo, Seattle, Duluth, and seven other large American cities.

- U. S. — CENSUS OFFICE. Report of the 12th census. Washington, 1900, vol. 10, p. 705-22.

Contains history and summaries of manufactured gas business in the United States. For statistics of municipal gas plants, 1900, see table p. 722.

- U. S. — CENSUS OFFICE. Statistics of cities having a population of 8,000 to 25,000: 1903. Washington, 1906. Bulletin no. 45.

See tables 9 and 10, p. 75-79, for statistics of gas works in various cities.

- U. S. — CENSUS OFFICE. Statistics of cities having a population of over 25,000: 1902 and 1903. Washington, 1906. Bulletin No. 20.

See tables 9 and 10, p. 104-107.

- U. S. — LABOR, BUREAU OF. Municipal ownership in Great Britain, by Frederic C. Howe. Washington, 1906. Bulletin, No. 62, Jan. 1906, p. 1-123.

Full discussion of both gas and electric light plants. Favorable to municipal ownership.

- U. S. — LABOR BUREAU OF. Water, gas and electric light plants, 1899. (Annual report, vol. 14, p. 375-531)

Contains much useful information and many tables. Reports of 367 gas plants out of 965.

- U. S. — STATE DEP'T. Gas in foreign countries. Special consular report, 1891, vol. 6, p. 89-346.



## UNITED STATES

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### Growth of the industry

The business of supplying gas for lighting developed much earlier than that of furnishing electric light. In England, we hear of a gas plant as early as 1800,<sup>1</sup> while in the United States in 1806, "David Melville, of Newport, R. I. lighted his premises by means of coal gas which he had manufactured thereon." Gas plants were established in Baltimore in 1816, Boston, 1822, New York, 1823, Brooklyn, 1825, and Bristol, R. I. 1825. Long before the present movement for municipal ownership, gas plants had been established in nearly all the large cities of the United States, and after a period during which many new gas companies were formed, competition gave way to consolidation, and the business settled down to a fairly stable basis. Coal gas had been at first supplied; water-gas, much cheaper, after Lowe's new process was invented, about 1875, revolutionized the industry; until at present more water gas than coal gas is sold by American gas companies.<sup>1</sup>

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<sup>1</sup> U. S. — Census office. Report of the 12th census, 1900, vol. 10, p. 711, 713.

INCREASE OF GAS PLANTS, 1850-1906 (Table 1)<sup>2</sup>

	Total plants	Municipal plants
1850 .....	30	0
1860 .....	221	2
1870 .....	390	4
1880 .....	No report	7
1890 .....	742	9
1900 .....	877	15
1906 .....	940 <sup>3</sup>	30 <sup>3</sup>

### Comparison with electric light stations

Over half of the number in 1900 (184) were located in cities of from 5,000 to 25,000 population; while of electric lighting plants, three-fourths were located in places having a population of 5,000 or less.

COMPARATIVE NUMBER OF GAS PLANTS AND CENTRAL ELECTRIC STATIONS (Table 2)<sup>4</sup>

Population of towns in which located	Central electric stations 1902	Gas plants <sup>5</sup> 1900
Under 5,000 .....	2,714	200
5-25,000 .....	675	484
25-100,000 .....	128	124
100,000-500,000 .....	73	39
500,000 and over .....	30	30
Total No. plants .....	3,620	877

<sup>2</sup> U. S. —Census office. Report of the 12th census, 1900, vol. 10, p. 705.

<sup>3</sup> Brown's directory of American gas companies, 1906. Besides 940 coal water and oil-gas plants, there were 117 gasoline gas plants, and 190 acetylene gas plants furnishing public or commercial gas lighting. See table 4.

<sup>4</sup> U. S.—Census office. Special report on central electric light and power stations, 1902, p. 14.

<sup>5</sup> Does not include natural gas plants.

The amount invested was however, a little greater in the gas business than in electric stations, with a labor force about the same, and an income nearly as great:

COMPARATIVE SUMMARY OF GAS PLANTS AND CENTRAL ELECTRIC STATIONS (Table 3)<sup>a</sup>

	Central electric stations, 1906	Gas plants, 1900
No. of plants . . . . .	3,620	877
Cost of construction and equipment . . . . .	\$504,740,000	\$567,000,000 <sup>a</sup>
Cost of supplies, material and fuel . . . . .	\$22,900,000	\$20,600,000
Salaries officials and clerks—number . . . . .	6,996	5,904
Salaries . . . . .	\$5,663,000	\$5,273,000
Wage earners—average number . . . . .	23,330	22,459
Wages . . . . .	\$14,983,000	\$12,436,000
Income . . . . .	\$85,700,000	\$75,700,000 <sup>7</sup>

### Gas plants by states—Private and municipal

Since the date of these figures, the number of gas plants has increased from 877 to 940, while the electric lighting stations now number 4284; but in the smaller towns, heretofore open only to electric lighting, many small gasoline and acetylene gas plants have been installed which in 1906, number 117 and 190 respectively. Exclusive of the 360 natural gas plants in the United States, there are, at present, a total of 1,226 plants manufacturing either coal, water, oil, acetylene or gasoline gas for purposes of public or commercial lighting. 110 of these are municipal. The table by states is as follows:

<sup>a</sup> Capital.

<sup>7</sup> Value of products.

## SUMMARY OF GAS PLANTS BY STATES

(Table 4)<sup>a</sup>

	COAL & WATER GAS <sup>b</sup>		ACETYLENE		GASOLINE		NATURAL GAS	
	Total	Munic.	Total	Munic.	Total	Munic.	Total	Munic.
Alabama.....	10	1	4	4	.....	.....	1	.....
Arizona.....	3	.....	.....	.....	.....	.....	.....	.....
Arkansas.....	5	.....	2	.....	.....	.....	2	.....
California.....	58	2	2	.....	.....	.....	3	.....
Colorado.....	10	.....	3	.....	.....	.....	1	.....
Connecticut.....	22	1	5	.....	.....	.....	.....	.....
District of Columbia.....	2	.....	.....	.....	.....	.....	.....	.....
Delaware.....	5	.....	.....	.....	.....	.....	.....	.....
Florida.....	11	.....	5	5	.....	.....	.....	.....
Georgia.....	12	2	2	2	.....	.....	.....	.....
Idaho.....	2	.....	.....	.....	.....	.....	.....	.....
Illinois.....	57	.....	3	1	7	3	.....	.....
Indiana.....	37	.....	6	3	.....	.....	130	1
Indian Territory.....	2	.....	.....	.....	.....	.....	.....	.....
Iowa.....	38	.....	13	2	47	23	.....	.....
Kansas.....	11	.....	7	1	.....	.....	26	2
Kentucky.....	17	1	.....	.....	.....	.....	1	.....
Louisiana.....	3	.....	1	.....	.....	.....	.....	.....
Maine.....	9	.....	14	.....	.....	.....	.....	.....
Maryland.....	11	.....	4	.....	.....	.....	.....	.....
Massachusetts.....	69	5	11	.....	.....	.....	.....	.....
Michigan.....	50	1	2	.....	1	.....	.....	.....
Minnesota.....	18	4	5	3	18	13	.....	.....
Mississippi.....	7	.....	.....	.....	.....	.....	.....	.....
Missouri.....	24	1	4	.....	.....	.....	3	.....
Montana.....	2	.....	.....	.....	.....	.....	.....	.....
Nebraska.....	10	.....	26	1	11	4	.....	.....
Nevada.....	2	.....	.....	.....	.....	.....	.....	.....
New Hampshire.....	12	.....	3	.....	.....	.....	.....	.....
New Jersey.....	40	.....	1	.....	.....	.....	.....	.....
New Mexico.....	1	.....	.....	.....	.....	.....	.....	.....
New York.....	108	1	25	1	15	.....	24	.....
North Carolina.....	11	.....	.....	.....	.....	.....	.....	.....
North Dakota.....	2	.....	7	1	.....	.....	.....	.....
Ohio.....	51	2	4	.....	.....	.....	53	1
Oklahoma.....	4	.....	2	.....	.....	.....	.....	.....
Oregon.....	4	.....	.....	.....	.....	.....	.....	.....
Pennsylvania.....	91	1	6	.....	.....	.....	104	.....
Rhode Island.....	6	.....	1	.....	.....	.....	.....	.....
South Carolina.....	4	.....	.....	.....	.....	.....	.....	.....
South Dakota.....	7	2	5	3	2	.....	.....	.....
Tennessee.....	8	.....	.....	.....	.....	.....	.....	.....
Texas.....	15	.....	8	.....	.....	.....	.....	.....
Utah.....	1	.....	.....	.....	.....	.....	.....	.....

<sup>a</sup> Compiled from Brown's directory of American Gas companies, 1906.

<sup>b</sup> Includes a few oil-gas plants.

## MUNICIPAL GAS LIGHTING

### SUMMARY OF GAS PLANTS BY STATES—continued.

	COAL & WATER GAS		ACETYLENE		GASOLINE		NATURAL GAS	
	Total	Munic.	Total	Munic.	Total	Munic.	Total	Munic.
Vermont.....	10	.....	.....	.....	.....	.....	.....	.....
Virginia.....	13	5	6	.....	.....	.....	.....	.....
Washington.....	8	.....	.....	.....	.....	.....	.....	.....
West Virginia.....	7	1	.....	.....	.....	.....	13	.....
Wisconsin.....	28	.....	3	1	14	10	.....	.....
Wyoming.....	2	.....	.....	.....	.....	.....	.....	.....
Totals.....	940	30	190	25	117	55	361	4

### Municipal gas plants—Coal and water-gas

The first municipal gas plant was established in 1852, when the city of Richmond bought out a private company. Alexandria, Va. followed, in 1853; Henderson, Ky. in 1867; Bellefontaine, Ohio, in 1873; and by 1890 there were nine plants in the United States owned by municipalities. Since then the number has slowly increased until in 1900, the census office reported 15 with a total capital investment of \$1,734,592, and a product of 484,952,120 cubic feet of gas annually, valued at \$450,000. In May, 1906, there were twenty-nine municipal plants supplying coal or water-gas for lighting purposes, and one plant owned and operated by the United States government, as follows:

CITIES HAVING MUNICIPAL GAS PLANTS (Table 5)<sup>11</sup>

State	City	Pop. of dis- trict sup- plied 1900	Municipal plant in operation	Miles of main lines	Net price		Annual output cubic feet	c. p.	Per cent. fuel sold for	No. of gas stoves in use
					light	fuel				
Alabama	Telladega	3,000	1901	3	\$2.00	\$1.00	5,000,000	18	35	65
California	Gilroy Clara <sup>12</sup>	1,800	.....	5	1.50	1.50	4,000,000	20	10	40
Connecticut	Norwich	5,000	.....	20	1.50	1.00 <sup>13</sup>	10,250,000	22	40	60
Georgia	Cartersville <sup>12</sup>	17,250	.....	26	1.25	1.25	36,000,000	20	40	600
"	Dalton	3,500	.....	9	4.00	2.00	2,700,000	.....	6	25
Kentucky	Henderson	4,500	.....	8	1.00	1.00	7,000,000	22	30	60
Massachusetts	Holyoke	18,000	1867	17	1.00	1.00	25,500,000	18	50	380
"	Middleboro	50,200	1902	41	1.20	1.20	128,000,000	18.5	.....	.....
"	Reeling	4,000	1894	3.5	2.75 <sup>14</sup>	2.20 <sup>14</sup>	1,520,000	26	70	15
"	Wakefield	15,000	1894	.....	1.40	1.40	18,150,000	19.4	.....	.....
Michigan	Westfield	12,310	1894	13	1.30	1.30	2,000,000	.....	.....	.....
Minnesota	Escanaba <sup>12</sup>	13,000	.....	5	1.35	75 <sup>15</sup>	.....	.....	5	.....
"	Adams <sup>12</sup>	850	.....	1	1.00	.....	.....	.....	.....	20
"	Duluth	52,000	1898	56	75	75	112,000,000	18	50	1,200
"	Renville <sup>12</sup>	1,300	.....	8	1.50	1.50	2,500,000	.....	60	60
"	W. Minneapolis	2,700	1905	4.5	1.50	1.50	.....	18	.....	17
Missouri	Rich Hill	4,000	.....	5	1.50	1.50	3,000,000	20	25	150
New York	West Point (U. S. go't)	2,200	.....	5.5	75	75	23,312,000	20	2	20
Ohio	Bellefontaine	9,000	1873	16	1.25	75	45,000,000	24	.....	.....
"	Hamilton	25,000	1890	37	80	80	73,000,000	20	45	1,900
Pennsylvania	Philadelphia (le'sed)	1,293,000	1897 <sup>15</sup>	1,300	1.00	1.00	8,711,000,000	22	.....	.....

<sup>11</sup> Compiled from Brown's directory of American gas companies, 1906.<sup>12</sup> Oil process.<sup>13</sup> Discount for quantity.<sup>14</sup> Gross price.<sup>15</sup> Official ownership began 1841, actual, 1887.

CITIES HAVING MUNICIPAL GAS PLANTS. (Table 5)—continued.

State	City	Pop. of dis- trict sup- plied 1900	Municipal plant in- stalled	Miles of mains	Net price		Annual output cubic feet	c. p.	Per cen. sold for fuel	No. of gas stoves in use
					light	fuel				
S. Dakota.....	DeSmet <sup>12</sup> .....	1,000	.....	3	2 00	2 00	2,000,000	24	50	30
"	Dell Rapids <sup>12</sup> .....	1,500	1905	4	1 25 <sup>14</sup>	1 25 <sup>14</sup>	44,000,000	18	.....	600
Virginia	Alexandria.....	15,000	1853	16	1 20	1 20	19,000,000	16.6	16	70
"	Charlottesville.....	8,000	1876	18	1 15	1 15	42,000,000	16.5	.....	.....
"	Danville.....	18,000	1876	12.5	1 00	1 00	6,420,000	18-20	.....	.....
"	Fredericksburg.....	6,000	1891	7	1 25 <sup>14</sup>	1 00	388,687,000	25	.....	4,369
"	Richmond.....	90,000	1852	87	1 00	1 00	116,000,000	16	.....	.....
West Virginia	Wheeling.....	40,000	1870	21	1 12 <sup>14</sup>	1 12 <sup>14</sup>	9,500,000	18	30	.....
Kentucky	Danville (1-5 stock) Louisville (1-4 " )	5,000 204,700	..... .....	..... 209	1 00	75	525,000,000	18	30	9,200

<sup>12</sup> Oil process.<sup>14</sup> Discount for quantity.

In Louisville, Ky. and Danville, Ky. the city owns stock in the gas company, one-fourth in the former instance and one-fifth in the latter.

### Municipal gas plants—Acetylene

The twenty-five municipal gas plants supplying acetylene gas for public and commercial lighting are located as follows:

MUNICIPAL ACETYLENE GAS PLANTS, 1906 (Table 6)<sup>16</sup>

		Populat'n
Alabama.....	Carrollton.....	278
	Fayette.....	452
	Gurley.....	831
	Luverne.....	731
Florida.....	Brooksville.....	641
	Dade City.....	509
	Hawthorn.....	300
	Lake Helen.....	208
	Tarpon Springs.....	541
Georgia.....	Ft. Oglethorpe (U. S. gov't).....	.....
	Royston.....	479
	Shannon.....	.....
Indiana.....	Darlington.....	727
	New Palestine.....	444
	Wabash.....	8,618
Iowa.....	Gladbrook.....	842
	Holstein.....	870
Minnesota.....	Bird Island.....	846
	Norwood.....	500
	St. Michael.....	305
Nebraska.....	Nehawka.....	300
New York.....	Spencerport.....	715
North Dakota....	Lisbon.....	1,046
Virginia.....	Fort Meyer (U. S. gov't).....	331
Wisconsin.....	Palmyra.....	.....

<sup>16</sup> Compiled from Brown's directory of American gas companies, 1906.



Two plants operated by the United States government are included in this list, one at Ft. Oglethorpe, Ga. and one at Fort Meyer, Va.

### Municipal gas plants—Gasoline.

The fifty-six municipal plants supplying gasoline gas are as follows:

MUNICIPAL GASOLINE PLANTS (Table 7)

		Pop. 1900
Illinois .....	Arthur .....	858
	Ashton .....	756
	Shabbona .....	587
Iowa .....	Bancroft .....	839
	Brighton .....	807
	Brooklyn .....	1,188
	Charter Oak .....	772
	Clarence .....	675
	Delta .....	691
	Durant .....	560
	Dysart .....	902
	Hedrick .....	1,025
	Manila .....	773
	Marcus .....	718
	Mediapolis .....	725
	Milton .....	849
	Monroe .....	917
	Morning Sun .....	948
	Newell .....	762
	Pleasantville .....	738
	Richland .....	554
	Riverside .....	696
Minnesota .....	Shelby .....	692
	Sioux Center .....	810
	Williamsburg .....	1,100
	Winfield .....	820
	Amboy .....	432
	Brandon .....	272
	Bricelyn .....	600
	Canby .....	1,100
	Cottonwood .....	549
	Dodge Center .....	942
	Hayfield .....	439
	Heron Lake .....	928
	Houston .....	542
	Lake Benton .....	890
Nebraska .....	Madelia .....	1,272
	Monticello .....	818
	Mountain Lake .....	959
	Hartington .....	282
	Newman Grove .....	696

## MUNICIPAL GASOLINE PLANTS—continued.

	North Bend.....	1,010
	Oakland.....	1,008
	Syracuse.....	861
North Dakota.....	Elk Point.....	1,000
	Flandreau.....	569
Wisconsin <sup>17</sup> .....	Altoona.....	717
	Cambria.....	678
	Clinton.....	892
	Fox Lake.....	908
	Hammond.....	445
	Hilbert.....	550
	Horicon.....	1,553
	Juneau.....	944
	Nekoosa.....	1,069
	Wautoma.....	850

These gasoline gas plants are located almost entirely in the middle west, usually in cities of less than 1,000 population.

**Municipal gas plants—Natural gas**

In the 246 towns containing natural gas plants, there are 361 companies; of these only four are municipal, as follows:

	Population
Dunkirk, Ind.....	3,187
Chanute, Kan.....	4,208
Neodesha, Kan.....	1,772
Lancaster, Ohio.....	15,000

The natural gas supply is not constant, however, the supply gradually ceasing in some localities, and new wells developing in others. Different conditions prevail, generally, than in the business of supplying manufactured gas.

<sup>17</sup> Population for places in Wisconsin from census of 1905.

## FOREIGN COUNTRIES

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### **Canada**

In New Brunswick, the city of Moncton owns its gas plant; the towns of Newcastle, and Pictou acquired the gas plants, and discontinued them, supplying electricity instead. In the province of Ontario, the cities of Berlin, Brockville, Guelph, Kingston, London, Owen Sound, St. Thomas and Waterloo have municipal plants.

Virden, in the province of Manitoba, owns an acetylene gas plant.

### **South America**

The city of Bahia, Brazil, has acquired the gas works.

### **Great Britain**

In 1905, there were in the United Kingdom, 710 gas plants, of which 454 were private and 256 municipal.<sup>18</sup> In 1906, the figures were 459 private plants and 260 municipal, as follows:

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<sup>18</sup> *Municipal year book of the United Kingdom, 1905, p. 379.*

GAS PLANTS IN GREAT BRITAIN, 1905-1906<sup>19</sup>

	Municipal	Private
England and Wales.....	204	443
Scotland .....	45	5
Ireland .....	11	11
United Kingdom.....	260	459

<sup>19</sup> Municipal year book of the United Kingdom, 1906, p. 381.

## WISCONSIN

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### Coal and water-gas plants

There are 27 coal and water-gas plants in Wisconsin; none of them municipal. The list is as follows:

	Population
Appleton (Neenah, Menasha) .....	17,000
Ashland .....	14,500
Baraboo .....	5,895
Beloit .....	12,855
Berlin .....	4,640
Chippewa Falls .....	9,009
Eau Claire .....	18,737
Fond du Lac .....	17,284
Green Bay .....	22,854
Janesville .....	13,707
Kenosha .....	16,235
La Crosse .....	29,078
Madison .....	24,301
Manitowoc .....	12,733
Marinette (and Menomonie, Mich.) .....	15,354
Milwaukee (2 plants) .....	312,948
Oshkosh .....	30,575
Portage .....	5,524
Racine .....	32,290
Ripon .....	3,811
Sheboygan .....	24,026
Stevens Point .....	9,022
Superior (and West Superior) .....	36,551
Watertown .....	8,622
Waukesha .....	6,949
Wausau .....	14,458
Wauwatosa .....	2,913

### Acetylene gas plants

There are three acetylene gas plants in Wisconsin: Deerfield, pop. 587, Milton, pop. 810, and Palmyra, pop. 710, the last being owned by the city.

**Gasoline gas plants**

Besides the ten municipal gasoline gas plants in this state, listed on p. 14, there are four privately owned plants: at Beaver Dam, pop. 5,615, Hortonville, pop. 890, Marion, pop. 580, and Markesan, pop. 787. Most of the gasoline and acetylene plants have been established since 1900.

There are in Wisconsin 11 municipal gas plants out of a total of 42, as compared with 46 municipal electric stations out of a total of 123.

**WISCONSIN MUNICIPAL GAS PLANTS—GASOLINE**

(Table 9)

	Pop. dis- trict sup- plied	Am't bonds issued	No. of meters	Miles of mains	Price	No. public lamps
Altoona.....	700	\$5,500	45	1.5	\$1 50	22
Cambria.....	680	.....	55	2	1 25	26
Clinton.....	900	\$5,500	84	3.25	1 25	30
Fox Lake.....	900	.....	80	4	.....	44
Hammond.....	450	.....	60	1	1 25	16
Hilbert.....	550	\$7,000	40	2.3	1 25	16
Horicon.....	1,600	\$8,000	80	5.5	1 00	61
Juneau.....	1,000	.....	80	3.5	1 50	28
Nekoosa.....	1,070	.....	40	2.25	1 15	19
Wautoma.....	850	.....	.....	.....	.....	.....







1907

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COMPARATIVE LEGISLATION BULLETIN  
No. 9

## BOYCOTTING

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GROVER C. HUEBNER

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MADISON, WISCONSIN  
OCTOBER, 1906

The many controversies to-day over boycotting, blacklisting, the use of injunctions etc., have been the cause of much legislation. This bulletin giving a summary of legislation on boycotting, will be found useful to all interests involved, as it is entirely impartial.

A bulletin on blacklisting will soon be issued.

CHARLES MCCARTHY

*Legislative Reference Department*

# BOYCOTTING

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GROVER C. HUEBNER

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COMPARATIVE LEGISLATION BULLETIN — No. 9 — OCTOBER, 1906  
Prepared with the co-operation of the Political Science Department of the University of Wisconsin

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1906

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ton, 1904.

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## DEFINITIONS

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*Connecticut.* The term boycott is a compendious name used to describe a series of acts not in the line of lawful competition, commenced and continued by all persons who can be persuaded to join in them, to hinder and prevent the proper pursuit of a lawful business, with intent to injure the corporation, firm or individual against whom the boycott is directed. *State v. Glidden*, 1887, 55 Conn. 76.

*United States.* "A boycott is an organized effort to exclude a person from business relations with others, by persuasion, intimidation, and other acts which tend to violence, and thereby force him, from fear of resulting injury, to submit to dictation in the management of his affairs." *Casey v. Cinn. Typo. Union No. 3*, 1891, 45 Fed. 135.

A combination of employees to compel their employers, by threats of quitting and by actually quitting their service, to withdraw from a mutually profitable relation with a third person having no effect on the character or reward of the employees services, for the purpose of injuring such third person, is a boycott. *Thomas v. Cincinnati, N. O. & T. P. Ry. Co.* 1894, 62 Fed. 803.

The term boycott "implies a combination to inaugu-

rate and maintain a general proscription of articles manufactured by the party against whom it is directed." *Oxley Stave Co. v. Coopers' International Union*, 1896, 72 Fed. 695.

*Michigan.* A boycott is a combination of several persons to cause a loss to a third person by causing others, against their will, to withdraw from him their beneficial business intercourse through threats, that unless a compliance with their demands is made, the persons forming the combination will cause loss or injury to him; or an organization formed to exclude a person from business relations with others by persuasion, intimidation, and other acts of violence, and thereby cause him through fear of resulting injury to submit to dictation in the management of his affairs. *Beck v. Ry. T. P. Union*, 1898, 118 Mich. 497.

#### FORMS OF BOYCOTTING

##### **Compound boycott**

The boycott involving third parties is commonly known as the compound boycott.

##### **Primary boycott**

The boycott involving only the persons directly interested in the dispute is known as a primary boycott.

##### **Unfair list**

The unfair list is generally a list of employers published in labor papers and magazines in order to induce the readers to withhold their patronage until compliance with the demands of the employees has been made. It is not always regarded as a boycott.



**Fair list**

The fair list is the opposite of the unfair list. Legally it is not included under boycotting.

**Union label**

The same is true of the union label. Legally it is not a boycott and is nowhere, in the United States, illegal.

## LAWS AND JUDICIAL DECISIONS

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### Foreign countries

*England.* Before 1875 the common law of criminal conspiracy was applicable. Three classes of conspiracy were recognized: 1. where the end to be accomplished is a crime in each of the conspiring parties; 2. where the purpose of the conspiracy is lawful, but the means to be resorted to are criminal; and 3. where, with a malicious design to do an injury, the purpose is to affect a wrong, though not such a wrong as when perpetrated by a single individual amounts to an offense under the criminal laws.<sup>1</sup>

Conspiracy and Protection of Property Act. 1875, 38 & 39 Vic. c. 86. This modifies the common law so that a combination to do, or procure to be done, any act in contemplation or furtherance of a trade dispute, is not indictable as a conspiracy if such act when committed by one person is not a crime punishable with imprisonment.

Though peaceful boycotting cannot under this act be treated as criminal conspiracy, it can be treated as civil conspiracy and damages collected. *Quinn v. Leatham*, 1901, 17 T. L. R. 749.

This case is now generally followed. If the intent of the boycott is to maliciously injure it is actionable as a civil conspiracy.<sup>2</sup>

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<sup>1</sup> Report of the Royal Commission of 1874.

<sup>2</sup> Bills are frequently introduced to change this act.

This statute (sec. 7) also, prohibits the use of violence, persistant following about, hiding of tools, cloths or other property, the watching or besetting of houses or other places of business and the disorderly following of persons by two or more.

*New Zealand.* The act of 1894, no. 13, changes the mode of procedure from criminal conspiracy to civil conspiracy, as is the case in England.

*Belgium.* The law of May 31, 1866, modified the law of conspiracy, but the law of May 30, 1892, levies severe penalties against intimidation, mob rule and the breaking of tools. There is no statute especially against boycotting.

*Holland.* The law of April 11, 1903, reinforces the penalties against violence and threats, which were already provided for in the common law. There is no special law against boycotting.

*Austria.* The law of April 7, 1870, art. 3, penalizes violence, threats and the forcing of others to enter combinations or to retire from such combinations. No special law.

*France.* The penal code of France suspends the common law and regulates strikes and the use of intimidation, threats, violence and similar acts. There is no statute especially applicable to boycotts.

If a strike is called to maliciously injure the employer, rather than to benefit the strikers, it calls for damages. Cass. 9 June, 1896, Mounier c. Renaud.

Interference with employment by threats is prohibited. Cass. ap. Caen, Oct. 21, 1897.

*Italy.* Pen. Code. art. 155, et. s. Similar to the French law.

*Germany.* The law of June 21, 1869, art. 153 imposes penalties against those who wish to coerce others by violence, threats, interdiction or otherwise.

Str. G. B. c. 360, par. 11. The boycott is practically declared to be illegal.

### **United States**

There is no federal law directly dealing with boycotts. The Anti-trust Law has been applied in various cases (U. S. Comp. St. 1901, Title 56B. p. 3200; Act of July 2, 1890. sec. 1-8)

*Thomas v. Cincinnati, N. Or. & Tex. Pac. Ry.* 1894, 62 Fed. 803. *In re Phelan*, 1894, 62 Fed. Rep. 824; *U. S. v. Debs et al.* 1894, 64 Fed. 724; *U. S. v. Cassidy et al.* 1895, 67 Fed. 698.

Boycotts have also been declared illegal on the basis of interference with the provisions of the Interstate Commerce Law.

*In re Grand Jury*, 1894, 62 Fed. 40; *S. Cal. Ry. v. Rutherford et al.* 1894, 62 Fed. 796.

Federal courts have also taken account of the law against interference with the United States mails.

*In re Grand Jury*, 1894, 62 Fed. 840; *U. S. v. Cassidy et al.* 1895, 67 Fed. 698. *U. S. v. Debs et al.* 1894, 64 Fed. 724.

Federal courts sometimes declare boycotting to be unlawful interference with another's business and punishable under the common law of conspiracy.<sup>3</sup> Injunctions have very frequently been granted against boycotts by federal courts.

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<sup>3</sup> In England the courts may punish a peaceable boycott only as a civil conspiracy. In the United States it may be punished as a criminal conspiracy. See page 8.

*Alabama.* Laws, 1903, no. 329, sec. 1-4. It is unlawful for two or more persons to conspire to prevent a lawful business, or for any person to go near or loiter about the premises of business in order to influence others not to deal with a person, firm or corporation, or to picket in order to interfere with a lawful business, or to print or circulate notice of a "boycott," boycott cards, stickers, dodgers or "unfair lists," or to publish that such action is contemplated. No blacklist, unfair list, or similar list can be punished because of any lawful act or decision of a judicial or public official. Penalty is fine not less than \$50 nor more than \$500, or imprisonment not over sixty days. General provisions against interference with employment and the use of intimidation are included in this statute.

*Arizona.* Pen. Code, 1901, sec. 170. General Conspiracy Law. Application doubtful.

*Arkansas.* Dig. 1904, sec. 5030. General law prohibiting interference with employment when under contract. Application doubtful.

*California.* Pen. Code, 1903, c. 289, sec. 1. No agreement to do an act in furtherance of a trade dispute shall be deemed criminal, be indictable as a criminal conspiracy or be enjoined when such act if committed by an individual is not punishable as a crime. Force or violence is, however, prohibited.

Yet in *Jordahl v. Hayda et al.* 1905, 82 Pac. 1079, it was held that boycotting is enjoined when there are acts of intimidation in threatening prospective customers and that it is not necessary to show actual exercise of physical force or violence.

*Colorado.* Acts, 1905, c. 79, sec. 1-5. It is a mis-

demeanor for any person to loiter about or parole streets, alleys, roads, highways, trails or places of business, to influence others not to deal with any person, firm or corporation, or to picket in order to interfere with or obstruct any lawful business, or to print or circulate notice of "boycott," boycott cards, stickers, banners, signs, or dodgers, or to publish the name of any judicial or public officer in any of the above manners because of any lawful act or decision. Penalty is fine not less than \$10 nor more than \$250 or imprisonment not over sixty days, or both. The statute includes provisions against intimidation and force.

*Connecticut.* Gen. St. 1902, sec. 1296. General statute against intimidation and threats to prevent interference in lawful action.

This statute covers boycotting. *State v. Glidden*, 1887, 8 At. 890.

*Delaware.* Rev. Code, 1893, p. 928. Prohibition of interference with employment in case of strikes on railroads. Application doubtful.

*District of Columbia.*<sup>4</sup>

*Florida.* Acts, 1893, c. 4144. General statute prohibiting conspiracy against workingmen.

*Georgia.* Pen. Code, 1895, sec. 119-126. It is a misdemeanor to hinder the engagement of a person in a lawful business by threats, violence, intimidation or other unlawful means.

Laws, 1901, no. 390, sec. 1-4. Statute against interference with employment.

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<sup>4</sup> No statute against boycotting.

*Idaho.* Ann. Code, 1901, sec. 4686. General conspiracy act. Application doubtful.

*Illinois.* Rev. St. 1905, c. 38, sec. 46. Two or more persons, or the officers or executive committee of any society, organization or corporation who issue any circular or edict to establish a so called "boycott" or blacklist, or who distribute any notices fraudulently or maliciously intending to wrongfully and wickedly injure the person, character, business, employment or property of another, or who do an illegal act injurious to the public trade, health, morals, police or administration of public justice, or who prevent competition in letting out public contracts or who induce persons not to enter such competition, are guilty of conspiracy. Penalty is imprisonment in the state penitentiary not over five years, or fine not over \$2,000, or both.

A circular of a business association directing members not to deal with a certain person for alleged default toward another member is not actionable. *Ulery v. Chi. Live Stock Exchange*, 1894, 54 Ill. App. 233.

c. 38, sec. 158. General statute against intimidation by combinations.

c. 18, sec. 159. Act against the intimidation of workmen.

c. 38, sec. 160. Act against the entering of premises to intimidate.

*Indiana.* Ann. St. 1901, sec. 3312m-3312u. Any person, firm or association of persons agreeing to prevent any wholesale or retail dealer or manufacturer from selling to any dealer, mechanic or artisan, or any one who obeys such request, because said dealer, artisan or mechanic is not a member of a combination or

association, is guilty of conspiracy against trade. Such agreements are void in law. Fine not less than \$50 nor more than \$2,000, or imprisonment for not more than one year, or both. County prosecuting attorney is to prosecute violations. Damages may be granted.

*Iowa.* Code, 1897, sec. 5059. Conspiracy with the fraudulent or malicious intent wrongfully to injure the person, character, business, property or rights in property of another is prohibited. Application doubtful.

*Kansas.* Gen. St. 1905, sec. 2481. It is unlawful for any person or persons willfully or maliciously, by any act or by intimidation, to interfere or conspire to interfere with a lawful business. Application doubtful.

*Kentucky.* St. 1903, sec. 802-804. Prohibits the obstruction of railroads etc. by violence, intimidation and coercion. Application doubtful.

*Louisiana.* Rev. Laws, 1904, sec. 944. Law against intimidation of seamen.

¶ Boycotting a hotel by refusing to buy from drummers who stay there is actionable for damages. *Webb v. Drake*, 1899, 52 La. Ann. 290.

A person can refuse dealing with another for any motive whatever, but cannot always influence another person to do the same for any motive. *Graham vs. St. Charles St. R. Co. et al.* 1895, 16 So. 806.

*Maine.* Rev. St. 1903, c. 124, sec. 9. General statute against intimidation in case of strikes of gas, telegraph, telephone, electric light, electric power or railroad corporations.

c. 128, sec. 20-21. General conspiracy act. The



statute includes provisions against intimidation, force and threats.

There can be a boycott without combination. Such a boycott grants a title to recover damages. *Davis v. Starrelt*, 1903, 97 Me. 568.

*Maryland.* Pub. Laws, 1904, art. 27, sec. 34. An act in furtherance of a trade dispute cannot lead to prosecution as a criminal conspiracy unless such act be punishable as an offense when committed by an individual.

Yet in *My Maryland Lodge*, no. 186, *International Association of Machinists et al. v. Adt*, 1905, 59 At. 721, the injunction of the lower court against threatening with a boycott and unfair list was continued.

*Massachusetts.* Rev. St. 1902, c. 106, sec. 11. General statute against intimidation.

A boycott with intent to injure another's business is an illegal conspiracy. Motive is the deciding element. *Martell v. White et al.* 1904, 60 N. E. 1085.

*Michigan.* Comp. Laws, 1897, sec. 11343. General statute against intimidation of employees.

A boycott is a form of coercion and is unlawful and enjoinable even though peaceful. *Beck v. Ry. Teamsters' Protective Union*, 1898, 118 Mich. 497.

*Minnesota.* Rev. Laws, 1905, sec. 1822. General statute against interference with employment and coercion of employees.

sec. 4869. Unlawful to conspire to interfere with a lawful trade on calling by force, threats or intimidation.

sec. 5140. General statute against the use of coercion.

sec. 5168. A statute against trusts and combinations so extended that it may effect trade boycotts.

Compound boycott enjoined. Legality of unfair list depends upon whether it portends injury to the plaintiff so as to make it a boycott. *Grey et. al. v. B. T. C. et al.* 1903, 97 N. W. 663.

*Mississippi.* Code, 1892, sec. 1006. General conspiracy act.

sec. 1270. It is unlawful for two or more persons who willfully and maliciously combine or conspire to obstruct or impede, by any act or any means of intimidation, the regular operation of any railroad.

Acts, 1898, c. 70, sec. 1. General statute against intimidation of employees.

*Missouri.* Rev. St. 1899, sec. 2155. General statute against intimidation of employees and interference with employment.

Boycott circular is not illegal. Freedom of speech and press provided for in the Missouri constitution. *Marx & Hass Jeans Clothing Co. v. Watson et al.* 1902, 67 S. W. 391.

Primary boycott is legal. Compound boycott is an illegal conspiracy and is enjoinable. *Walsh v. Assoc. Master Plumbers of St. Louis et al.* 1902, 71 S. W. 455.

*Montana.* Pen. Code, 1895, sec. 320. General conspiracy act. Application doubtful.

*Nebraska.*<sup>5</sup>

*Nevada.* Comp. Laws, 1900, sec. 4751. General conspiracy act. Application doubtful.

*New Hampshire.* Pub. St. 1901, c. 266, sec. 12. It is unlawful for any person to interfere or endeavor to interfere in any way in order to injure another in his property or lawful business.

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<sup>5</sup> No statute against boycotting.

*New Jersey.* Laws, 1898, c. 235, sec. 37. General conspiracy act. Application doubtful.

It is actionable to attempt to ruin another's business by inducing wholesale houses not to sell him goods. *Van Horn v. Van Horn*, 1890, 20 At. 485.

Trades council is restrained from issuing circulars calling on the members of unions and the public to cease buying and advertising in the boycotted paper. *Barr v. Essex Trades Council*, 1894, 101 At. 881.

Laws, 1903, c. 257, sec. 63. Prohibits interference with railroad operation by strikers.

*New Mexico.*<sup>6</sup>

*New York.* Parker's Crim. and Pen. Code, 1904, c. 168, par. 5. If two or more persons conspire to hinder another in the exercise of lawful business or in doing any lawful act by force, threats or intimidation, they are guilty of a misdemeanor.

Interference by outside parties and attempts to enforce a boycott against an employer, come within this statute and common law as well. Punishable as a misdemeanor and actionable for damages. *Old Dominion Steamship Co. v. McKenna et al.* 1887, 30 Fed. 48.

Compound boycott unlawful and liable to damages. *Ryan v. Burger & Hower Brewing Co.* 1891, 12 N. Y. Sup. 660.

Refusal to sell to dealers who will not maintain a uniform price is not an actionable boycott. *Parks & Sons Co. v. Nat. W. D. A.* 1903, 175 N. Y. 1.

Laws, 1903, c. 349. It is a misdemeanor to willfully deprive a member of the national guard of his employment or to obstruct him or his employer in respect to his trade, business or employment, because said guard is such a member.

*North Carolina.* Unfair list not actionable. Court implies that a boycott would be actionable. Implies

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<sup>6</sup> No statute against boycotting.

that an unfair list is not a boycott. *State v. Van Pelt*, 1904, 49 S. E. 177.

*North Dakota.* Const. 1889, art. 1. Interference with employment is a misdemeanor.

Pen. Code, 1899, sec. 7037. Statute prohibiting conspiracy against workmen.

sec. 7660-2. Any person who, by force, threats or intimidation, prevents or endeavors to prevent another from employing any person, or compels a change of the mode of business, an increase or decrease of the number of men, or the rate of wages or time of service, is guilty of a misdemeanor. Intimidation of employees is prohibited.

*Ohio.*

Union held liable in case of a general boycott declared and partly carried out. *Parker v. Bricklayers' U.* No. 1, 1899, 21 Wkly. L. Bul. 223.

Union injuring business by notices to customers that dealing with the employer will result in themselves being boycotted is illegal. *Moore & Co. v. Bricklayers' U.* No. 1, et al. 1890, 23 Wkly. L. Bul. 48.

*Oklahoma.* Ann. & Rev. St. 1903, sec. 2643. Statute against intimidation of employees.

*Oregon.* Ann. Code & St. 1902, sec. 1971. Any person who, by force, threats or intimidation, prevents or endeavors to prevent the continuance of a man's service or the acceptance of new service by him, or who circulates false written or printed statements, or is concerned in such circulation, to prevent a person from employing another, or to compel him to employ another, to alter his mode of business, or to limit or increase the number of employees, their wages or time of service, is guilty of a misdemeanor.

A boycott must be "presistant, aggressive and virulent" before an injunction is proper and available. *Longshore Printing Co. v. Howell*, 1894, 38 Pac. 547.

*Pennsylvania.*

The maintenance of a boycott by the use of injurious and threatening acts that caused the plaintiff's business to fall off greatly is not protected by the law protecting unions, but the parties thereof may be enjoined. *Brace v. Evans*, 1888, 5 Pa. Co. C. 163.

Primary boycott is not unlawful coercion. *Buchanan v. Barnes*, 1894, 28 At. 195.

*Porto Rico.* Pen. Code, 1902, sec. 465. Statute against intimidation of employees and interference with employment. Application doubtful.

*Rhode Island.* Gen. Laws, 1896, c. 278, sec. 8. General statute against intimidation of employees.

c. 279, sec. 45. It is unlawful for any person to willfully and maliciously or mischievously injure or destroy property, or hinder a lawful business.

An agreement to withdraw patronage from any dealer selling supplies to others than master plumbers is not evidence that plumbers conspired to ruin complainant's business. *Macauley v. Tierney*, 1895, 33 At. 1.

*South Carolina.* Laws, 1902. no. 574, sec. 5. A combination "boycotting" any person or corporation for dealing with one not a member of the combination is guilty of conspiracy to defraud. Applicable to trade boycotts only.

*South Dakota.* Pen. Code, 1903. sec. 757-8. Statute against intimidation of employers and employees.

*Tennessee.*

Maliciously to threaten to discharge employees if they trade with a third party is not actionable. Threats and intimidation to break up a man's business is actionable. *Payne v. Western Ry. Co.* 1888, 13 Tenn. 521.

*Texas.* Pen. Code, 1895, art. 309, 324. General

statute against intimidation of employees and interference with employment.

art. 600. Intimidation of employees prohibited.

art. 806-807. Intimidation of railroad employees prohibited.

Laws, 1903, c. 94, sec. 3, par. 2. Any two or more persons, firms, corporations or associations who agree to boycott any person, firm, corporation or association for buying from or selling to any other person, firm, corporation or association, are guilty of a conspiracy in restraint of trade. Such a contract is void. Penalty is \$50 per day of violation or imprisonment not less than one nor more than ten years.

*Utah.* Laws, 1898, sec. 4156. General conspiracy law. Application doubtful.

Laws, 1905, c. 16. Threats to destroy property or do bodily injury in order to prevent any person from entering or remaining in the employ of any company, corporation or individual, is a misdemeanor.

*Vermont.* Laws, 1902, c. 220, sec. 5041-2. Law against intimidation of employees.

Boycotting is a criminal conspiracy under the common law. The intimidation statute is mentioned. *State v. Stewart*, 1887, 59 Vt. 273.

"It is clear that everyone has a right to withdraw his own patronage when he pleases, but it is equally clear that he has no right to employ threats or intimidation to divert the patronage of another." What one man may do may not always be done by a combination. Actual damages granted. *Boutwell et al. v. Marr et al.* 1899, 42 At. 607.

### *Virginia.*

A boycott warrants a conviction for conspiracy. *Crump v. Commonwealth*, 1888, 84 Va. 927.

*Washington.* Code, 1902, sec. 6518. Prohibition

of intimidation in the case of coal mines. Application doubtful.

A compound boycott was enjoined under the common law. *Jensen v. Cooks and Waiters Union of Seattle et al.* 1905, 81 Pac. 1069.

*West Virginia.* Code, 1899, p. 1053, sec. 14. Interference with employment in coal mines prohibited.

A boycott is a malicious and wanton interference, and is illegal and actionable. *W. Va. Transportation Co. v. Standard Oil Co.* 1902, 88 Am. St. Rep. 895.

*W. Va. Dig.* 1902, vol. 1, p. 663. "No statute by name making boycotting an offense. Whether it is indictable under the statute against conspiracies is a question. The usual remedy is by injunction."

*Wisconsin.* Rev. St. 1898, sec. 4466a. "Any two or more persons who shall combine, associate, agree, mutually undertake together for the purpose of willfully or maliciously injuring another in his reputation, trade, business or profession by any means whatever, or for the purpose of maliciously compelling another to do or perform any act against his will, or preventing or hindering another from doing or performing any lawful act shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding \$500."

sec. 4466c. Prohibition of interference with employment.

sec. 4568. Conspiracy. "Any person guilty of a criminal conspiracy at common law shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding \$500; but no agreement, except to commit a felony upon the person of another or to commit arson or burglary, shall be deemed a conspiracy or punished as such unless some act, beside

such agreement, be done to effect the object thereof by one or more of the parties of such agreement.” Application doubtful.

*Wyoming.*<sup>1</sup>

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<sup>1</sup> No statute against boycotting.



## SUMMARY

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### LEGALITY OF BOYCOTTS

#### **The compound boycott**

The compound boycott, in which third parties are boycotted or threatened with a boycott, is almost universally declared illegal, both under common and statutory law. Courts usually, though not always, have reference to this form of boycott when they use the term "boycott."

#### **The primary boycott**

The primary boycott, in which third parties are not attacked or threatened, is of doubtful legality. Many courts uphold its legality in the absence of intimidation, but others hold the opposite. Generally if these boycotts portend willful and malicious injury to the boycotted party, they are illegal; if they portend benefit to the boycotters, they are legal. This is, however, not a universal rule. The primary trade boycott is the one most frequently upheld by the courts.

#### **The unfair list**

The legality of the unfair list has seldom been tested in the courts.

The court of appeals continued an injunction of the lower court against threatening an unfair list. *My Maryland lodge, No. 186, et al. v. Adt.* 1905, 59 At. 721.

The legality of the unfair list depends upon whether or not it portends injury to the plaintiff so as to make it a boycott. *Grey et al. v. Building Trades Council et al.* 1903, 97 N. W. 663.

It was held that an unfair list is not actionable. *State v. Van Pelt*, 1904, 49 S. E. 177.

Alabama has a statute which declares the unfair list illegal.

### **The fair list**

The fair list has nowhere in the United States been declared illegal and is not legally a boycott.

### **The union label**

The union label is legal. The great majority of the states and territories have statutes expressly legalizing and protecting it. Legally it is not a boycott.

## STATUTES AGAINST BOYCOTTING

### **Picketing**

Certain states have statutes definitely prohibiting picketing and loitering about to interfere with a lawful business. These laws affect boycotting inasmuch as they prohibit practices which sometimes accompany boycotts.

See Ala. and Col.

### **Conspiracy against workmen**

In eight states there are laws prohibiting conspiracy against workmen. These affect some boycotts by reaching a practice which sometimes accompanies a boycott. The general conspiracy laws of some of the states are of the same nature.

See Fla., Ga., Ill., Kan., Minn., Miss., N. Y. and N. D.

### **Intimidation**

Many states and territories have statutes against the general use of intimidation, force, coercion and violence. While these statutes, under the interpretation of some courts, do not affect all boycotts, they cover at least those in which there is manifest intimidation. They reach some peaceful boycotts, as some courts hold that a peaceful boycott is in itself a form of coercion.

*Beck v. Ry. Teamsters' Protective Union*, 1898, 118 Mich. 497.

See intimidation statutes of Ala., Conn., Ga., Ill., Ky., Me., Mass., Mich., Minn., Miss., Mo., N. H., N. Y., N. D., Okla., Ore., P. R., R. I., S. D., Tex., Utah, Vt., and Wash.

### **Interference with employment**

There are twenty states and territories prohibiting interference with employment. These necessarily affect the successful determination of many boycotts to some extent.

See Ala., Ark., Conn., Del., Ga., Ill., Kan., Ky., La., Miss., Minn., N. Y., N. J., N. D., Ore., Pa., R. I., W. Va., Utah, and Wis.

### **General statutes**

About twenty states and territories have statutes not containing the term "boycott," but which may be fairly interpreted as prohibiting boycotting.

—See Ala., Conn., Fla., Ga., Me., Mass., Mich., Minn., Miss., Mo., N. H., N. Y., Okla., Ore., S. D., N. D., Tex., Utah, Vt., and Wis.

**Prohibition of boycotting in name**

Certain states have statutes which prohibit boycotting as such under the name "boycotting."

See Ala., Col., Ill., Ind., S. C.,<sup>8</sup> and Tex.

**COURT INTERFERENCE****Common law**

In numerous states the courts proceed under the common law of conspiracy. This may either result in punishment against criminal or against civil conspiracy.<sup>9</sup> The common law doctrine depends largely upon whether or not the intent is willful and malicious.

**Illegal acts accompanying boycotts**

Whenever there is intimidation, force, coercion, threats or violence, the courts may proceed against the illegal act accompanying the boycott, and may thus check the boycott to a certain degree even in the absence of both statutory and common law provisions against the boycott itself.

**Injunctions**

The most frequent remedy of the courts is the injunction. The compound boycott is generally enjoined when adequate facts are shown; the primary boycott is sometimes enjoined when malicious intent and combination are shown; the unfair list, whose legality is as yet a much disputed matter, was enjoined in *My Md. Lodge, No. 186. et al. Adt. 1905, 59 At. 721.*

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<sup>8</sup>S. C. statute applies only to trade boycotts.

<sup>9</sup>See p. 8 for the law of conspiracy.











1907

WISCONSIN FREE LIBRARY COMMISSION  
LEGISLATIVE REFERENCE DEPARTMENT  
COMPARATIVE LEGISLATION BULLETIN  
No. 10

# BLACKLISTING

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GROVER C. HUEBNER

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MADISON, WISCONSIN  
NOVEMBER, 1906

This bulletin will be found especially timely because of the great agitation over labor legislation. It is a companion bulletin to that upon "Boycotting" by the same author.

This bulletin and the one on "Boycotting" will be found useful both to labor interests and employers as no hardly short statement of the kind now obtainable in America.

CHARLES MCCARTHY  
*Legislative Reference Department*

# BLACKLISTING

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GROVER G. HUEBNER

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COMPARATIVE LEGISLATION BULLETIN—NO 10—NOVEMBER, 1906

Prepared with the co-operation of the Political Science  
Department of the University of Wisconsin

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MADISON, WIS.  
1906

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Vol. 16. Foreign blacklisting laws, p. 171.

Vol. 19. General explanation of the problem, p. 892-952.



## DEFINITIONS

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*Ohio.* A "blacklist" is defined to be a list of persons marked out for special avoidance, antagonism, and enmity on the part of those who prepare the list or those among whom it is intended to circulate; but it is most usually resorted to by combined employers who exchange lists of their employees who go on strikes, with the agreement that none of them will employ the workmen whose names are on the lists. *Mattison v. Lake Shore & M. S. Ry. Co.* 1895, 3 Ohio Dec. 526.

*Texas.* Acts, 1901, c. 99, sec. 4. "He is guilty of blacklisting who places, or causes to be placed, the name of any discharged employee, or any employee who has voluntarily left the service of any individual, firm, company, or corporation on any book or list or publishes it in any newspaper, periodical, letter or circular, with the intent to prevent said employee from securing employment of any kind with any other person, firm, corporation or company, either in a public or private capacity."

### FORMS OF BLACKLISTING

#### **Blacklist**

This is the blacklist above defined, and is the practice legally known as "blacklisting."

**Clearance card**

This is a written statement given to employees upon leaving employment and is sometimes used as a means of blacklisting. The instrument, as such, is not recognized as blacklisting by the courts.

**Whitelist**

This term refers to the practice of having employer's associations register the employees of all the members and secure a history of each one. The history is sent to the members when they desire to hire additional employees. It is sometimes known as the "negative blacklist."



## LAWS AND JUDICIAL DECISIONS

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### Foreign countries

*England.* Conspiracy & Protection of Property Act. 38 and 39 Vic. c. 86. The common law is so modified that a combination to do, or procure to be done, any act in contemplation or furtherance of a trade dispute between employers and workmen is not indictable as a conspiracy if such act when committed by one person is not a crime punishable by imprisonment. Courts have held that this does not prevent punishment as a civil conspiracy (Quinn v. Leatham, 1901, 17 T. L. R. 749) With this modification, England follows the common law in dealing with blacklists.

Appeal dismissed because there was no other motive than self interest. Jenkinson v. Neild, 1892, 8 T. L. R. 540.

Damages granted because the purpose was to injure. Injunction made permanent. Trollope v. London Bld'g Trades Fed. 1895, 72 L. T. 342.

The legality of the blacklist depends upon its motive. Quinn v. Leatham, 1901, 17 T. L. R. 749; Bullock v. St. Anne's Master Builders, 1902, 19 T. L. R. 27.

*France.* In 1889 the obligatory features of the certificate of employment were suppressed. By art. 3, Laws, 1889, all persons, with the exception of those

in a few industries, may, at the end of their services, exact a certificate containing exclusively the date of their coming and going and the kind of work at which they have been employed.

*Germany.*<sup>1</sup> In Germany both the courts and statute law declare blacklisting illegal. Upon cessation of employment the employer is required to give the workman a certificate of dismissal. There is a heavy penalty against placing any signs or marks on the certificates which convey knowledge not therein expressed.

### **United States**

Comp. St. 1901. Every employer engaged in interstate or foreign transportation, except masters of vessels as defined in sec. 4612 Rev. St. of U. S. "who shall, after having discharged an employee, attempt or conspire to prevent such employee from obtaining employment, or who shall, after the quitting of an employee, attempt or conspire to prevent such employee from obtaining employment, is hereby declared to be guilty of a misdemeanor, and, upon conviction thereof in any court of the United States of competent jurisdiction in the district in which such offense was committed, shall be punished for each offense by a fine of not less than \$100 and not more than \$1,000."

*Alabama.* Code, 1897, c. 192, sec. 5511. Statute prohibiting interference with employment.

Acts, 1903, no. 329, sec. 5. It is unlawful for any person, firm or corporation to maintain a "blacklist"

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<sup>1</sup> Authority of the consul of Germany at Philadelphia, Oct., 1906. Also see U. S. Ind. Com. Rpt. vol. 16, p. 171.

or to notify any other firm or corporation that any person is blacklisted, or to use any similar means to prevent employment. Fine not less than \$50 nor more than \$500, or imprisonment not over sixty days.

*Arizona.*<sup>3</sup>

*Arkansas.*<sup>4</sup>

*California.*<sup>5</sup>

*Colorado.*<sup>6</sup> Acts, 1905, c. 79, sec. 4. It is a misdemeanor for any employer to maintain a "blacklist" or notify other employers that any workman is blacklisted in order to prevent his employment. It is not unlawful to make a true statement upon application of the employee or the prospective employer. It is not unlawful to maintain or publish a list as to persons' financial standing. Penalty is fine not less than \$10 nor more than \$250, or imprisonment not longer than sixty days, or both.

*Connecticut.*<sup>7</sup> Gen. St. 1902, sec. 1299. "Every employer who 'blacklists' an employee with the intent to prevent him from procuring other employment is to be fined not more than \$200"

*Delaware.*<sup>8</sup>

*Florida.* Acts, 1893, c. 4144, sec. 1. General statute prohibiting conspiracy against workingmen, to prevent employment.

Acts, 1893, c. 4207, sec. 1-5. No railroad company or other corporation or any person, agent or employee of such corporation is to prevent the employment of a

<sup>3</sup> No statute against blacklisting.

<sup>4</sup> See statute against *False charges*, p. 20

<sup>5</sup> See *Protection of unions*, p. 20

<sup>6</sup> See *Protection of unions*, p. 20

<sup>7</sup> See *Protection of unions*, p. 20

<sup>8</sup> No statute against blacklisting.

discharged employee, by any work, writing, sign or other means. Fine not less than \$100 nor more than \$500; and damages are also to be granted. A truthful statement may be made. If a truthful statement of the cause of discharge is not furnished within ten days upon request of the discharged employee, then no such statement can be made thereafter. A company having received a "blacklist" is to furnish the same to the employee upon request. The law is to apply to railroad companies or corporations under the same general management or contract, but having separate divisions.

*Georgia.* Code, 1895, sec. 119. Statute prohibiting organization to prevent the employment of any person.

Code, 1895, sec. 124. Conspiracy to prevent employment is a misdemeanor.

Code, 1895, sec. 1873. Blacklisting is prohibited in name, in case of corporations, or agents or employees thereof. A truthful statement of cause of discharge is to be furnished upon request.

An act to require certain corporations to give to their discharged employees or agents the cause of removal or discharge is unconstitutional. *Wallace v. Ga. N. Ry. Co.* 1894, 22 S. E. 579.

A blacklist is declared unlawful when a false report is circulated. *Willis v. Muscagee Co.* 1904, 48 S. E. 177.

*Idaho.*<sup>9</sup>

*Illinois.* Rev. St. 1905, c. 38, sec. 46. If any two or more persons conspire together, or the officers or executive committee of any society, organization or corporation issue or utter any circular or edict as the

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<sup>9</sup> See *Protection of unions*, p. 20

action or instruction to its members, or any other persons, societies, organizations or corporations for the purpose of establishing a so-called boycott or blacklist, or distribute any written or printed notice, with the fraudulent or malicious intent wrongfully and wickedly to injure the person, character, business, employment or property of another...they are guilty of a conspiracy. Penalty is imprisonment in the penitentiary not exceeding five years or fine not exceeding \$2,000, or both.

The instruments of railroads known as "clearance cards" are not illegal. *McDonald v. I. C. R. Co.* 1900, 58 N. E. 463.

*Indiana.* Ann. St. 1901, sec. 7076. Prevention of employment is unlawful.

sec. 7077. It is unlawful for any railroad company or other company, partnership or corporation, to "blacklist" discharged employees, or by work, writing or other means to prevent employment of any employee. Compensatory and exemplary damages are to be granted. If the employer does not furnish a true statement upon request of the employee, no such statement can be made thereafter at any time.

This statute applies only to discharged employees. The section relative to employees voluntarily leaving employment is unconstitutional, as it is not expressed in the title of the act. *Wabash R. Co. v. Young*, 1904, 69 N. E. 1003.

*Iowa.* Code, 1897, Supp. 1902, sec. 5027-28. No person, agent, company or corporation can by word or writing prevent discharged employees from securing employment. Truthful statement may be furnished upon request. Penalty is fine not less than \$100 nor more than \$500. Damages are granted. In case of agents of any railroad company, partnership or cor-

poration, treble damages are granted if the employee is prevented from obtaining employment.

*Kansas.*<sup>10</sup> Gen. st. 1905, sec. 4026-30. No employer may by word, sign or writing of any kind whatsoever attempt to prevent the employment of a discharged employee. A true statement of the cause of discharge is, however, to be furnished upon request of the employee. Penalty is fine of \$100 for each offense and thirty days imprisonment. Damages equal to three times the sum of the injury and reasonable attorney's fees are granted in addition.

*Kentucky.*

Railroads are liable to discharged employees for false entry upon records when such records are in any way communicated to other railroads, and the employees have thereby been prevented from obtaining employment. There must be an overt act. *Hundly v. Louisville & N. R. Co.* 1898, 48 N. W. 429.

Blacklisting does not make a person liable unless there is coercion or deception. *Baker v. Sun Life Insurance Co.* 1901, 64 S. W. 967.

*Louisiana.*<sup>11</sup>

*Maine.* Rev. St. 1903, c. 127, sec. 21. Any employer, employee, or other person, who by threats of injury, intimidation or force, alone or in combination with others, prevents any person from entering into, continuing in or leaving the employment of any person, firm or corporation, is to be punished by imprisonment for not more than two years, or by fine not exceeding \$500.

*Maryland.*<sup>12</sup>

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<sup>10</sup> See *Protection of unions*, p. 20

<sup>11</sup> No statutes against blacklisting.

<sup>12</sup> No statutes against blacklisting.

*Massachusetts.*<sup>13</sup>

Employer sent names of strikers to other like corporations and an agreement was made not to employ them unless they returned to the defendant at his wages. Held entitled to relief in equity. *Worthington v. Waring*, 1892, 34 Am. St. R. 294.

*Michigan.* Comp. Laws, 1897, c. 315, sec. 11343. General statute against intimidation, providing that no person shall in any way, without legal authority, molest any workman in the quiet and peaceful pursuit of his lawful avocation.

*Minnesota.*<sup>14</sup> Gen. Laws, 1905, sec. 5097. It is a misdemeanor for two or more corporations or employers to agree to combine or confer together to prevent a man's employment by circulating blacklists or by any means. Unlawful for a corporation or company, or agent or employee thereof to blacklist discharged employees, or by word or writing hinder an employee from obtaining employment who has voluntarily left service. (Act was enacted in 1895, c. 174, sec. 1-6)

This act is constitutional. *State ex rel. Schaffer v. Justus*, 1902, 88 N. W. 759.

*Mississippi.* Ann. Code, 1892, sec. 1006, no. 5. General statute against interference with employment and conspiracy against workmen. Application to blacklisting is doubtful.

*Missouri.*<sup>15</sup> Rev. St. 1899, sec. 2166. Every person who sends, delivers, makes, or causes to be made, sent or delivered, or who parts with any paper, letter, or writing, signed or unsigned, or publishes a false statement, to prevent the employment of a person, or

<sup>13</sup> See *Protection of unions*, p. 20

<sup>14</sup> See *Protection of unions*, p. 20

<sup>15</sup> See *False charges*, p. 20

who "blacklists" a person in any way to prevent employment or to cause discharge, is guilty of a misdemeanor. Fine not over \$1,000 or imprisonment, or both.

*Montana.* Ann. Code, 1895, sec. 3390-92. "Blacklisting" is a penal offense and punishable as such. Damages are granted. A truthful statement is not prohibited. If such statement is not furnished upon request of the employee, it cannot be furnished thereafter to any person.

Pen. Code, sec. 656. Violation of the above statute is a misdemeanor.

*Nebraska.*

A blacklist is a conspiracy and includes an abstract of delinquent debtors sent by a commercial association to other merchants branding the debtors as unworthy of credit. Damages are granted. *Master v. Lee*, 1896, 39 Neb. 574.

*Nevada.*<sup>18</sup> Comp. Laws, 1900, sec. 4982. Any person, association, company, or corporation or agent, preventing any employee from getting employment is guilty of a misdemeanor.

Acts, 1905, c. 150, sec. 1-3. Any corporation, association, company, or individual who "blacklists," or publishes or causes to be blacklisted any discharged employee with intent to prevent his employment, is guilty of a misdemeanor. Fine not less than \$50 nor more than \$250, or imprisonment not less than thirty nor more than ninety days, or both. A truthful statement is permitted on application. Such statement cannot be used as cause for a libel suit.

*New Hampshire.* Rev. St. and Sess. Laws, 1901,

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<sup>18</sup> See *Protection of unions*, p. 20



c. 266, sec. 12. General statute against intimidation of employees and interference with workmen.

*New Jersey.*<sup>17</sup>

*New Mexico.*<sup>18</sup>

*New York.*<sup>19</sup>

A manufacturer in contract with wholesale dealers of medicines to handle their goods at uniform prices supplied the dealers with a list of those who cut prices. This is not unlawful. *Park & Sons Co. v. N. W. D. A.* 96 Am. St. Rep. 578.

*North Carolina.*<sup>20</sup>

*North Dakota.* Const. art. 1, sec. 23. Any malicious interference with the obtaining of employment is a misdemeanor.

art. 17, sec. 212. "The exchange of blacklists between corporations shall be prohibited.

Rev. Code, 1899, sec. 7041-2. It is a misdemeanor for any person, corporation or agent thereof to maliciously interfere with the obtaining or holding of employment. It is a misdemeanor to exchange or furnish a "blacklist."

*Ohio.*<sup>21</sup> Ann. St. 5th ed. pt. 2, Civ. Code, sec. 3365-20. Railroads are to furnish discharged employees with a written statement of the cause of the discharge..

Failure to furnish such statement does not make the company liable. *Crall v. Toll. & O. C. Ry. Co.* 1893, 7 C. C. 132.

Damages are granted in case of a combination between railroads to maliciously prevent employment. *Mattison v. Lake Shore & M. S. R. Co.* 1895, 3 Ohio, Dec. 526.

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<sup>17</sup> See *Protection of unions*, p. 20

<sup>18</sup> No statute against blacklisting.

<sup>19</sup> See *Protection of unions*, p. 20

<sup>20</sup> No statute against blacklisting.

<sup>21</sup> See *Protection of unions*, p. 20

*Oklahoma.* Rev. Ann. St. 1903, sec. 2658-9. It is a misdemeanor for any company, corporation or individual to "blacklist," or require a letter of relinquishment from any employee, with the intent to prevent his further employment. Fine not less than \$100 nor more than \$500. Damages are to be granted.

*Oregon.*<sup>22</sup> Acts, 1903, p. 137, sec. 1. It is a misdemeanor for any corporation, company or individual to "blacklist" or publish any blacklist to prevent the employment of a discharged employee. Fine not less than \$50 nor more than \$250, or imprisonment not less than thirty nor more than ninety days, or both.

*Pennsylvania.*<sup>23</sup>

*Porto Rico.*<sup>24</sup>

*Rhode Island.* Gen. Laws, 1896, c. 279, sec. 45. General statute against interference with lawful employment.

*South Carolina.*

Employees could not collect, as they were receiving wages from their union while on strike. *Bradley v. Pier-son*, 1892, 24 At. R. 65.

*South Dakota.* Rev. St. 1903, Pen. Code, sec. 758. Statute against interference with employment which may be interpreted to cover blacklisting.

*Tennessee.*<sup>25</sup>

*Texas.* Acts, 1901, c. 99, sec. 1-4. It is a misdemeanor for any corporation, company, or individual to "blacklist" or cause to be blacklisted any discharged employee, with the intent of preventing his obtaining em-

<sup>22</sup> See *Protection of unions*, p. 20

<sup>23</sup> See *Protection of unions*, p. 20

<sup>24</sup> See *Protection of unions*, p. 20

<sup>25</sup> No statute against blacklisting.

ployment. Fine not less than \$50 nor more than \$250, or imprisonment not less than thirty nor more than ninety days, or both. True statement may be made upon application of the employee or prospective employer.<sup>26</sup>

*Utah.* Const. art. 12, sec. 19. Any malicious interference with employment of any employee is a crime.

Rev. St. 1898, sec. 1340-41. Any company, corporation or individual who "blacklists" or causes to be blacklisted any employee to prevent his employment is guilty of a felony. Fine not less than \$500 nor more than \$1,000 and imprisonment in state prison not less than sixty days nor more than one year.

*Vermont.*<sup>27</sup>

*Virginia.* Code, 1904, sec. 3657c. It is a misdemeanor for any corporation, manufacturer, manufacturing company, or agent thereof, to maliciously and willfully prevent, or attempt to prevent by word or writing, directly or indirectly, the employment of a discharged employee. Fine not less than \$100 nor more than \$500. A truthful statement may be made upon application.

*Washington.* Code, 1902, sec. 5992. "Blacklisting" is prohibited in terms. It is a misdemeanor and is punishable by fine of not less than \$100 nor more than \$1,000, or imprisonment for not less than ninety days nor more than one year, or both.

*West Virginia.*<sup>28</sup>

*Wisconsin.*<sup>29</sup> Rev. St. 1898, c. 182, sec. 4466b.

<sup>26</sup> See p. 16 for definition in Texas Law.

<sup>27</sup> No statute against blacklisting.

<sup>28</sup> No statute against blacklisting.

<sup>29</sup> See *Protection of unions*, p. 20

"Any two or more persons, whether members of a partnership or company or stockholders in a corporation, who are employers of labor, who shall combine or agree to combine for the purpose of preventing any person seeking employment from obtaining the same, or for the purpose of procuring or causing the discharge of any employee by threats, promises, circulating blacklists or causing the same to be circulated, or who shall, after having discharged any employee, prevent or attempt to prevent such employee from obtaining employment with any other person, partnership, company or corporation by the means of the aforesaid, or shall authorize, permit or allow any of his or their agents to blacklist any discharged employee or any employee who has voluntarily left the service of his employer, or circulate a blacklist of such employee to prevent his obtaining employment under any other employer, or shall coerce or compel any person to enter into an agreement not to unite with or become a member of any labor organization as a condition of his securing employment or continuing therein, shall be punished by a fine of not more than \$500 nor less than \$100, which fine shall be paid into the state treasury for the benefit of the school fund." Truthful statement may be made upon application of the employee, the prospective employer or any bondsman or surety. Such information cannot be given with intent to blacklist or prevent employment. An employer may keep a record for his own information.

*Wyoming.*<sup>30</sup>

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<sup>30</sup> No statute against blacklisting.

## SUMMARY

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### LEGALITY

Though there are more statutes directly aimed at blacklisting than at boycotting, the courts do not recognize the illegality of blacklisting as clearly. In the absence of special statutes, the common law doctrine of malicious and willful intent to do injury may be applied. Wherever there is a conspiracy, the common law of civil conspiracy may be applied as it is in England,<sup>31</sup> or even extended so as to demand punishment as a criminal conspiracy. American courts do not, however, uniformly adopt this rule. Especially is this true in the case of railroad clearance cards. Courts have held them to be a lawful instrument.

*McDonald v. Ill. C. R. Co.* 58 N. E. 463; *C. C. C. & St. L. Ry. Co. v. Jenkins*, 1898, 174 Ill. 398.

The legality of the "whitelist" has not been determined.

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<sup>31</sup> See p. 6.

## REMEDIES

**Protection of unions**<sup>32</sup>

Seventeen states and territories and the federal government have statutes prohibiting the exaction from workmen of agreements that they will not be members of unions. These statutes strike at one of the important causes of blacklisting.

Compare the laws of:

- Cal. Pen. Code, 1903, sec. 679.
- Col. Acts, 1897, c. 50, sec. 1-2.
- Conn. Gen. St. 1902, c. 82, sec. 1297.
- Idaho Codes, 1901, sec. 4858-9.
- Ill. Rev. St. 1905, c. 38, sec. 46.
- Ind. Ann. St. 1901, sec. 2302.
- Kan. Gen. St. 1905, sec. 4039.<sup>33</sup>
- Mass. Rev. Laws, 1902, c. 106, sec. 12.
- Minn. Rev. Laws, 1905, sec. 5097.
- Nev. Acts, 1903, c. 111, sec. 1-2.
- N. J. Gen. St, 1895, p. 1905, sec. 45-47.
- N. Y. Parker's Crim. & Pen. Code, sec. 171a.
- Ohio Ann. St. pt. 2, Civ. Code, sec. 3364-68.
- Ore. Acts, 1903, c. 137, sec. 1.
- Pa. Dig. 1893-1903, p. 851, sec. 5.
- P. R. St. & Code, 1902, sec. 553.
- Wis. Rev. St. 1898, c. 182, sec. 4466.<sup>34</sup>
- U. S. Comp. St. 1901, Title, 56c, sec. 10.

**False charges**

Arkansas and Missouri have statutes prohibiting the making of false charges against railroad employees.

Ark. Dig. 1904, sec. 6655. Mo. Rev. St. 1899, sec. 2165.

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<sup>32</sup> These laws are difficult to enforce and sometimes declared unconstitutional. The Mo. law was declared unconstitutional in *State v. Julow*, 1895, 29 Lawyers Rep. Ann. 257.

Laws of a similar nature are those preventing discharge or hindrance in employment because of having engaged in a strike. Minn. St. 1905, sec. 1822.

<sup>33</sup> Unconstitutional. *Brick & Title Co. v. Perry*, 1904, 76 P. 848.

<sup>34</sup> Unconstitutional. *State v. Kreutzberg*, 1902, 90 N. W. 1098.

## Interference with employment

Eight states have general statutes against interference with employment, which may be interpreted to prohibit blacklisting.

See Ala., Ga., Ind., Maine, Mass., N. H., R. I., and S. D.

Florida and Mississippi have statutes of this nature prohibiting conspiracy against workmen.

## Truthful statement furnished

Though without a blacklisting law, Ohio provides that, upon application, railroads must furnish a truthful statement of the cause of the discharge to the employee.

## Prohibition of blacklisting in name<sup>35</sup>

Twenty-one states and territories have enacted statutes, prohibiting blacklisting as such under the term blacklisting.

See Ala., Col., Conn., Fla., Ga., Ill., Ind., Iowa, Kan., Minn., Mo., Mont., Nev., N. D., Okla., Ore., Tex., Utah, Va., Wash. and Wis.

Of these, fourteen extend the statutes to cover "any person" guilty of blacklisting.

See Ala., Col., Conn., Kan., Mo., Mont., Nev., Iowa, Okla.,<sup>36</sup> Va., Ore., Tex., Utah, and Wash.

Two statutes apply only to two or more persons blacklisting.

See Ill., Wis.

Five apply to railroads and other corporations.

See Ind.<sup>37</sup>, Fla., Ga., N. D., Minn.<sup>38</sup>

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<sup>35</sup> For Federal law see p. 8

<sup>36</sup> Corporations, manufacturers, manufacturing cos. or agent or attorney thereof.

<sup>37</sup> Railroads, companies, partnerships or corporations.

<sup>38</sup> Corporations or companies or agent or employee thereof. The general statute applies to two or more corporations or employers.

Ten of these statutes prohibit the blacklisting of discharged employees.

See Fla., Ga., Ind.,<sup>39</sup> Iowa, Kan., Mont., Ore., Nev., Tex. and Va.

Eleven of them apply to any employee.

See Ala., Col., Conn., Ill., Minn., Mo., N. D., Okla-Utah., Wash., Wis.

Nine<sup>40</sup> permit the making of truthful statements upon application of the proper parties.

See Col., Fla., Ind., Iowa, Kan., Mont., Nev., Tex. and Wis.

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<sup>39</sup> Provision applying to employees voluntarily leaving is unconstitutional.

<sup>40</sup> In Georgia this was compulsory but was declared unconstitutional. *Wallace v. Georgia N. Ry. Co.* 1894, 22 S. E. 579.











WISCONSIN FREE LIBRARY COMMISSION  
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COMPARATIVE LEGISLATION BULLETIN  
No. 11

# THE INITIATIVE AND REFER- ENDUM

State Legislation

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MARGARET A. SCHAFFNER

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MADISON, WISCONSIN  
SEPTEMBER, 1907

## INTRODUCTION

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In the legislature of 1907 the following bills and resolutions relating to the initiative and referendum were introduced: Assembly bills 326, 357, 443; Senate bills 135, 177; Assembly joint resolutions 33, 37, 84; Senate joint resolution 17.

A handy compilation of laws and references relating to this subject will be of great use to future legislatures.

CHARLES MCCARTHY,  
*Chief Legislative Reference Department*  
Wisconsin Free Library Commission.

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Prepared with the co-operation of the Political Science De-  
partment of the University of Wisconsin

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## HISTORY

The "Initiative" and the "Referendum" are new terms for old institutions.

The initiative<sup>1</sup> may be defined as the power the people reserve to themselves to propose laws and to enact or reject the same independent of the legislature.

The referendum<sup>1</sup> may similarly be described as the power the people reserve to themselves to approve or reject any act passed by the legislative assembly.

The forms of the initiative and the referendum may be described as optional or obligatory in their operation upon the electorate, and as advisory or mandatory in their operation upon the legislature.

The referendum is obligatory when a law must be submitted to the people, and optional when a law is submitted only upon petition by a certain number of voters.

Under the mandatory initiative and referendum, the direct vote of the people is conclusive in the enactment of legislation. Under the advisory system, the voters can instruct their representatives by direct ballot. To make the system effective it is necessary to pledge representatives to obey the will of their constituents when expressed by referendum vote.

Public opinion laws merely secure the expression of public opinion on questions of public policy.

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<sup>1</sup> Compare the definitions in the constitutions of Mont. Const. (Amend. 1906) art. 5, sec. 1; Okla. Const. 1907. art. 5, sec. 1; Ore. Const. (Amend. 1902) art. 4, sec. 1; S. D. Const. (Amend. 1898) art. 3, sec. 1; and in the proposed amendments for Me. Resolves. 1907, c. 121; Mo. Laws, 1907, p. 452; and N. D. Laws, 1907, p. 451.

### **Local legislation**

The Swiss Landsgemeinde illustrates an early use of direct legislation in local affairs. The old New England town meeting, where measures were proposed and adopted or rejected at the option of the electors, affords another typical example.

### **Adoption of state constitutions**

The state wide referendum for the adoption of state constitutions is a familiar institution in the United States.

The present constitution of Massachusetts, adopted in 1780, was the first in this country to be submitted to a direct referendum vote.

At the present time Delaware is the only state in the Union in which a referendum is not required for the adoption of constitutional amendments.

### **State legislation**

The right to instruct representatives was commonly exercised before the adoption of written constitutions in this country.

The constitution of Massachusetts, adopted in 1780, expressly asserts the right of the people "to give instruction to their representatives." In 1783 the instructions from Boston ran: "It is our unalienable right to communicate to you our sentiments, and when we shall judge necessary or convenient, to give you our instructions on any special matter, and we expect you will hold yourselves at all times bound to attend to and to observe them."

After the adoption of written constitutions, judicial decisions generally concurred in the doctrine that the legislative assembly had no authority to redelegate the legislative power which was constitutionally vested in that body. Accordingly the legislature had no authority to refer the adoption or rejection of a general law to the people of the state.

For judicial decisions on this point, compare the following cases: *Thorne v. Cramer*, 1851, 15 Barb. (N. Y.), 112; *Barto v. Himrod*, 1853, 8 N. Y., 483; *People v. Collins*, 1854, 33 Mich., 343; *State v. Copeland*, 1854, 3 R. I., 33; *Santo v. State*, 1855, 2 Ia., 165; *State v. Hayes*, 1881, 61 N. H., 264.

For a contrary view, see *State v. Parker*, 1854, 26 Vt., 357.

### **Special constitutional provisions**

The adoption of constitutional provisions which expressly require popular ratification or rejection of legislative acts on specified questions, is the next step in the history of direct legislation in the United States.

Provisions for the obligatory state wide referendum on special questions are found quite generally in our state constitutions. They cover a variety of questions including suffrage, state boundaries and annexations of territory, the location of the seat of government and of state institutions, apportionment, the incurring of state indebtedness, the loaning of the state credit, banks and banking, state aid to railways, taxation, appropriations, sale of school lands, and provisions for education.

For typical illustrations of the obligatory referendum compare the following constitutional provisions:

*Suffrage.* Col. Const. 1876, art. 7, sec. 2; N. D. Const. 1889, art. 5, sec. 122; S. D. Const. 1889, art. 7, sec. 2; Wis. Const. 1848, art. 3, sec. 1.

*State boundaries and annexations of territory.* W. Va. Const. 1872, art. 6, sec. 11.

*Location of seat of government.* Col. Const. 1876, art. 8, sec. 2; Kan. Const. 1859, art. 15, sec. 8; Mont. Const. 1889, art. 10, sec. 2; Ore. Const. 1857, art. 14, sec. 1; Pa. Const. 1873, art. 3, sec. 28; S. D. Const. 1889, art. 20; Wash. Const. 1889, art. 14, sec. 1.

*Location of state institutions.* Tex. Const. 1876, art. 7, secs. 10 and 14; Wyo. Const. 1889, art. 7, sec. 23.

*Apportionment.* W. Va. Const. 1872, art. 6, sec. 50.

*Public credit.* Cal. Const. 1879, art. 16; Col. Const. 1876, art. 11, sec. 5; Id. Const. 1889, art. 8, sec. 1; Ill. Const. 1870, art. 4, sec. 18; Ia. Const. 1857, art. 7, sec. 5;

Kan. Const. 1859, art. 11, sec. 6; Ky. Const. 1891, sec. 50; Mo. Const. 1875, art. 4, sec. 44; Mont. Const. 1889, art. 13, sec. 2; N. J. Const. 1844, art. 4, sec. 6; N. Y. Const. (Amend. 1905) art. 7, sec. 4; R. I. Const. 1844, art. 4, sec. 13; S. C. Const. 1895, art. 10, sec. 11; Wash. Const. 1889, art. 8, sec. 3; Wyo. Const. 1889, art. 16, sec. 2.

*Banks and banking.* Ill. Const. 1870, art. 11, sec. 5; Ia. Const. 1857, art. 8, sec. 5; Kan. Const. 1859, art. 13, sec. 8; Mo. Const. 1875, art. 12, sec. 26; and Wis. Const. 1848, art. 11, sec. 5. Wisconsin provides for a double referendum, first, to determine whether a law shall be submitted, and then, by a second referendum, whether the law submitted shall be adopted.

*State aid to railways.* Minn. Const. (Amend. 1860) art. 9, sec. 2.

*Taxation.* Col. Const. 1876, art. 10, sec. 11; Id. Const. 1889, art. 7, sec. 9; Ill. Const. 1870, art. 4, sec. 33; Mont. Const. 1889, art. 12, sec. 9; Utah, Const. 1895, art. 13, sec. 7.

*Appropriations for public buildings.* Col. Const. 1876, art. 11, secs. 3-5; Ill. Const. 1870, art. 4, sec. 33.

*Sale of school lands.* Kan. Const. 1859, art. 6, sec. 5.

*Provisions for education.* Tex. Const. 1876, art. 7, secs. 10 and 14.

## Recent constitutional amendments

Within recent years a number of states have adopted constitutional provisions establishing the initiative and referendum for general state legislation. These amendments provide for the optional initiative and referendum, whereas the older constitutional provisions for the referendum on special state questions are obligatory.

For recent constitutional provisions for direct state legislation, see S. D. Const. (Amend. 1898) art. 3, sec. 1; Utah, Const. (Amend. 1900) art. 6, secs. 1 and 22; Ore. Const. (Amend. 1902) art. 4, sec. 1; Nev. Const. (Amend. 1904) art. 19, secs. 1 and 2, (provides referendum only); Mont. Const. (Amend. 1906) art. 5, sec. 1; Okla. Const., 1907, art. 5, secs. 1-4, 6-8, and art. 24, sec. 3.

For proposed constitutional amendments, see *Me., Resolves*, 1907, c. 121; *Mo., Laws*, 1907, p. 452-3; *N. D., Laws*, 1907, p. 451-3.

## Advisory systems

The difficulty of securing constitutional amendments

for the initiative and referendum has led to the development of other methods for securing at least partial systems of direct state legislation.

*Public opinion laws.* A public opinion system was enacted in Illinois in 1901. The electors of that state have voted upon a number of legislative questions; but as the candidates for the legislature were not pledged to obey the wishes of their constituents, these expressions of opinion have not been very effective in securing the legislation desired.

See Ill. Laws, 1901, p. 198.

*The advisory system within parties.* The advisory system within the parties at primary elections was adopted in Texas in 1905.

See Tex. Laws, 1905, c. 11, sec. 140.

### **Validity of the initiative and the referendum**

The validity of legislation for the initiative and referendum has been sustained in a number of recent court decisions.

In 1903 the supreme court of Oregon held that the initiative and referendum amendment to the constitution did not abolish nor destroy the republican form of government, nor substitute another in its place. The court declared: "The representative character of the government still remains. The people have simply reserved to themselves a larger share of legislative power." *Kaddery v. Portland*, 1903, 44 Ore., 118.

An interesting discussion as to what constitutes representative government is given by Madison in *The Federalist*, 302.

For additional judicial decisions on direct legislation, see *State ex rel. Lavin et al. v. Bacon et al.*, 1901, 14 S. D., 284; and *In re Pfahler*, 1906, 88 P., 270.

## LAWS AND JUDICIAL DECISIONS<sup>2</sup>

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### Foreign countries

*Switzerland.*<sup>3</sup> Fed. Const. 1874, art. 89. Federal laws, enactments, and resolutions are to be passed only by the agreement of the two councils. Federal laws must be submitted for acceptance or rejection by the people if the demand is made by 30,000 voters or by 8 Cantons. The same principle applies to federal resolutions which have a general application and which are not of an urgent nature.

art. 120. When either council of the Federal Assembly passes a resolution for the complete amendment of the federal constitution and the other council does not agree, or when 50,000 voters demand the complete amendment, the question whether the federal constitution ought to be amended is, in either case, to be submitted to a referendum vote, and if the majority of the citizens who vote pronounce in the affirmative, there must be a new election of both councils for the purpose of preparing the complete amendment:

<sup>2</sup> The present study concerns itself only with the initiative and the referendum for general state legislation. Constitutional provisions for the obligatory referendum on special state questions, and state legislation relating to the initiative and referendum in local affairs, are not considered.

<sup>3</sup> See United States. 57th Cong. 2nd sess. House of Rep. doc. no. 1 (in serial no. 4440) p. 982-94, for an excellent account of the Swiss referendum and initiative, by Arthur S. Hardy, formerly U. S. minister to Switzerland.



Fed. Law, June 17, 1874. This law provides the procedure for referendums.

Fed. Const. (Amend. 1891) art. 121. Partial amendment may take place through the forms of popular initiative or of those required for passing federal laws. The initiative may be used when 50,000 voters present a petition for the enactment, the abolition, or the alteration of certain articles of the federal constitution. When several subjects are proposed for amendment or for enactment in the federal constitution by means of the initiative, each must form the subject of a special petition. Petitions may be presented in the form of general suggestions or of finished bills. When a petition is presented in the form of a general suggestion, and the Federal Assembly agrees thereto, it is the duty of that body to elaborate a partial amendment in the sense of the initiators, and to refer it to the people and the Cantons for acceptance or rejection. If the Federal Assembly does not agree to the petition, then the question of whether there shall be a partial amendment at all must be submitted to the vote of the people, and if the majority of voters express themselves in the affirmative, the amendment must be taken in hand by the Federal Assembly in the sense of the people.

When a petition is presented in the form of a finished bill, and the Federal Assembly agrees thereto, the bill must be referred to the people and the Cantons for acceptance or rejection. In case the Federal Assembly does not agree, that body can elaborate a bill of its own, or move to reject the petition and submit its own

bill or motion to the vote of the people and the Cantons along with the petition.

art. 123. The amended federal constitution, or the amended part thereof, is to be in force when it has been adopted by a majority of the citizens who take part in the vote thereon, and by a majority of the states. In making up a majority of the states the vote of a half Canton is counted as a half vote.

Fed. Law, June 27, 1892. This law provides the mode of procedure for the initiative.

*The Cantons.* All the Cantons possess the initiative either in constitutional or legislative matters, or both. All except Freiburg have some form of the referendum either obligatory or optional, or both.

*Great Britain.* The question of introducing the referendum to settle disputes between the two houses was recently discussed in the British Parliament.

See the Parliamentary Debates for June 24, 1907, p. 911, 922-3.

*Commonwealth of Australia.* Const. 1900. This constitution was ratified by referendum vote taken in the separate colonies in Australia from 1898 to 1900. Under chapter 8, section 128, of the constitution, proposed amendments must be submitted to a referendum vote. A double majority is required for ratification, namely, a majority of all the electors voting and also a majority vote in more than half of the states.

*Norway.* An interesting use of the referendum was made by the people of Norway in their separation from Sweden. A Resolve of the Storting on July 28, 1905, provided for a referendum vote of the electors over the

whole country to decide the question of the dissolution of the union. The referendum took place on August 13, 1905, and resulted in a practically unanimous vote for the dissolution.

### **United States**

*Illinois.* Laws, 1901, p. 198. Under this law the submission of any question for an expression of public opinion may be secured on a written petition signed by 10% of the registered voters of the state. The petition must be filed with the proper election officers not less than sixty days before the election at which the question is to be considered. Not more than three propositions may be submitted at the same election and they are to be submitted in the order of filing.

*Maine.* (Proposed Const. Amend.) Resolves, 1907, c. 121. This amendment applies to statutory but not to constitutional law. Certain specific exemptions are also made for statutory law.

Emergency bills are not subject to the referendum. Such bills may include measures immediately necessary for the preservation of the public peace, health, or safety, but may not include (1) an infringement of the right of home rule for municipalities; (2) a franchise or license to a corporation or an individual, extending longer than one year; or (3) provision for the sale, or purchase, or renting for more than five years of real estate. The emergency and also the facts creating the same must be set forth in the preamble of the act. A two-thirds vote of all the members elected

to each house is necessary to pass an emergency measure.

Initiative bills may propose any measure, including bills to amend or repeal emergency legislation, but not to amend the state constitution. The petition must set forth the full text of the measure proposed and must be signed by not less than 12,000 electors. Proposed measures must be submitted to the legislature, and unless they are enacted without change, they must be submitted to the electors together with any amended form, substitute, or recommendation of the legislature, in such a manner that the people can choose between the competing measures, or reject both. When there are competing bills and neither receives a majority of the votes given for and against both, the one receiving the most votes is to be resubmitted by itself at the next general election, to be held not less than sixty days after the first vote thereon; but no measure is to be resubmitted unless it has received more than one-third of the votes given for and against both. An initiative measure enacted by the legislature without change is not to be referred unless a popular vote is demanded by a referendum petition. If the governor vetoes any measure initiated by the people and passed by the legislature without change and his veto is sustained by the legislature, the measure is to be referred to the people at the next general election.

The legislature may enact measures expressly conditioned upon the people's ratification by referendum vote.

Petitions for a reference of any act passed by the

legislature must be signed by not less than 10,000 electors, and must be filed within ninety days after the recess of the legislature. The governor is required to give notice of the suspension of acts through referendum petitions and make public proclamation of the time when the referred measure is to be voted upon. Referred measures do not take effect until thirty days after the governor has announced their ratification by a majority of the electors voting thereon.

*Missouri.* (Proposed Const. Amend. <sup>4</sup>) Laws, 1907, p. 452-3. The initiative and referendum apply to statutory law and to constitutional amendments. Initiative petitions require not more than 8% of the legal voters in each of at least two-thirds of the congressional districts in the state. Every petition must include the full text of the measure proposed, and must be filed not less than four months before the election at which it is to be voted upon.

The referendum may be ordered upon a petition signed by 5% of the legal voters in each of at least two-thirds of the congressional districts, or by the legislative assembly. Emergency measures are exempt from the referendum. Laws making appropriations for the state government, for the state institutions, and for the public schools are also exempt. Referendum petitions must be filed not more than ninety days after the final adjournment of the legislative session. A referred measure becomes a law when approved by a majority of the votes cast thereon.

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<sup>4</sup> This amendment will be submitted to the voters in Nov., 1908, for adoption or rejection.

*Montana.* Const. (Amend. 1906) art. 5, sec. 1. Direct legislation is established for statutory, but not for constitutional law. Certain specific exemptions are also made for statutory law. The referendum may not be invoked for emergency measures.

Initiative petitions require 8% of the legal voters from two-fifths of the whole number of counties of the state. They must include the full text of the measure proposed, and must be filed not less than four months before the election at which they are to be voted upon.

Referendum petitions require 5% of the voters from each of two-fifths of the counties and they must be filed not later than six months after the final adjournment of the legislative session.

Any measure referred to the people is to remain in full force and effect unless the referendum petition is signed by 15% of the legal voters of a majority of the whole number of the counties of the state, in which case, the law remains inoperative until it is passed upon at an election and the result has been determined as provided by law.

Laws, 1907, c. 62. This law establishes the procedure for carrying the direct legislation provisions of the constitution into effect. It definitely sets forth the requirements as to the form of petitions; the verification of signatures; the duties of officials in submitting petitions; the publication and distribution of the title and text of measures and of arguments; the manner of conducting the elections and of canvassing the vote; and

the proclamation of the governor declaring the enactment of the approved measures.

Provision is made for the official distribution of the text of measures to all the electors in the state. In addition, arguments for or against any proposed measures may be supplied at the expense of the parties interested; and such arguments when printed in pamphlet form of specified size and style, will be mailed by the state with the official copy of the measure to each voter.

Parties filing initiative petitions may supply arguments for and opposing parties may supply arguments against the measures proposed. In the case of referendums, any person may supply arguments for or against the referred measures; but the secretary of state is not obliged to receive any pamphlets for distribution unless a sufficient number is furnished to supply one to every legal voter in the state.

*Nevada.* Const. (Amend.,<sup>5</sup> 1904) art. 19, secs. 1 and 2. A referendum may be ordered on petition of 10% of the voters. A referred measure becomes operative when approved by a majority vote.

*North Dakota.* (Proposed Const. Amend.<sup>6</sup>) Laws, 1907, p. 451-3. The initiative and referendum apply to statutory law and to constitutional amendments, but the same constitutional amendment may not be proposed oftener than once in ten years.

Initiative petitions require not more than 8% of the legal voters, they must include the full text of the

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<sup>5</sup> This amendment does not provide for the initiative, and the procedure provided for the referendum is indefinite.

<sup>6</sup> This amendment must also be passed by the next legislature before being submitted to the people for adoption or rejection.

measure proposed, and must be filed not less than thirty days before any regular session of the legislature. The proposed measure must be transmitted to the legislature as soon as it convenes. Initiative measures take precedence over all other measures in the legislative assembly, except appropriation bills, and must be enacted or rejected without change or amendment within forty days. Any initiative measure enacted by the legislature is subject to referendum petition, or it may be referred by the legislature. If it is rejected, or no action is taken upon it by the legislature within the forty day limit, it must be submitted to the people for approval or rejection at the next regular election. The legislature may reject any measure proposed by initiative petition and propose a competing bill to accomplish the same purpose. This gives opportunity for publicity, for committee hearings, for the taking of testimony, for debate, and for deliberative consideration. When an initiative measure and a competing bill are both proposed, they must both be submitted to the people. In case conflicting measures submitted at the same election are both approved by a majority of the votes severally cast for and against the same, the one receiving the highest number of affirmative votes becomes valid and the other is thereby rejected.

The referendum does not apply to emergency measures. However, provision is made against an undue use of the emergency clause by the requirement that the facts creating the emergency be stated in one section of the bill, and if upon an aye and nay vote in



each house, two-thirds of all the members elected to each house vote on a separate roll call in favor of the law going into instant operation, it becomes operative upon approval of the governor.

Referendum petitions require not more than 5% of the legal voters and must be filed not more than ninety days after the final adjournment of the legislature. Any constitutional amendment or other measure referred to the people is to take effect when approved by a majority of the votes cast thereon, and is to be in force from the date of the official declaration of the vote.

This amendment is self executing, but legislation may be enacted to facilitate its operation.

*Oklahoma.* Const. 1907, art. 5, secs. 1-4, 6-8, and art. 24, sec. 3. The initiative and referendum apply to constitutional and to statutory law. Emergency measures are exempt from the referendum provisions.

Legislative measures may be proposed by 8%, and amendments to the constitution by 15% of the legal voters. Initiative petitions must contain the full text of the measure proposed. They must be filed with the secretary of state and be addressed to the governor who must submit them to the people.

A referendum may be ordered by 5% of the legal voters. Petitions for referred measures must be filed not more than ninety days after the final adjournment of the legislature.

Initiative measures require a majority of the votes cast at the election, while only a majority of the votes cast on a referred measure are necessary to give it ef-

fect. The referendum may be demanded by the people against one or more items, sections, or parts of any act of the legislature.

The explicit statement is also inserted that "the reservation of the powers of the initiative and referendum shall not deprive the legislature of the right to repeal any law, or propose or pass any measure which may be consistent with the constitution of the state and the constitution of the United States."

In the light of the experience of older states that have adopted direct legislation in state affairs, this statement seems superfluous. The provisions of the state constitutions which reserve direct legislative power for the people do not contemplate the restriction of initiative power in the legislature; the power constitutionally delegated to representatives to initiate measures or to repeal laws still remains. The people merely reserve the right to propose measures and to enact or reject either initiative or legislative measures independent of the legislative assembly. For a discussion of this point, see *Kadderly v. Portland*, 1903, 44 Or. 118.

*Oregon.* Const. (Amend., 1902) art. 4, sec. 1. The initiative and referendum apply to constitutional and to statutory law, but the referendum may not be invoked for emergency measures.

Every initiative petition must contain the full text of the measure proposed, must be signed by at least 8% of the legal voters, and must be filed not less than four months before the election at which it is to be voted upon.

Referendum petitions must be signed by at least 5% of the voters, and must be filed not more than ninety days after the final adjournment of the legislative assembly.

Any measure referred to the people becomes a law

when it is approved by a majority of the votes cast thereon.

The initiative and referendum amendment does not abolish or destroy the republican form of government or substitute another in its place. The representative character of the government still remains....

Under this amendment, it is true, the people may exercise a legislative power and may in effect veto bills passed and approved by the legislature and the governor, but the legislative and executive departments are not destroyed.... Laws proposed and enacted by the people under the initiative laws of the amendment are subject to the same constitutional limitations as other statutes and may be amended or repealed by the legislature at will. *Kadlerly v. Portland*, 1903, 44 Or. 118.

Laws, 1907, c. 226. This act facilitates the operation of the initiative and referendum powers reserved by the people, regulates elections thereunder, and provides penalties for violations. The law definitely prescribes the form of initiative and referendum petitions; the manner of verifying signatures; the duties of officials in submitting measures; the method of canvassing and making returns; and the declaration of the enactment of approved measures.

The following definite provision is made for the publication and distribution of the text of proposed measures and for arguments advocating or opposing the questions submitted:—Before any election at which any proposed law or amendment to the constitution is to be submitted to the people, the secretary of state is required to have printed in pamphlet form the text of each measure to be submitted, together with the title as it will appear on the official ballot. Parties filing initiative petitions have the right to file any arguments advocating such measures. In the case of referen-

dums, any person has the right to file arguments for or against the referred measures. The parties offering arguments for distribution must pay all the expense for paper and printing to supply one copy with every copy of the measure to be printed by the state. The cost of printing, binding, and distributing the measures proposed, and of binding and distributing the arguments, are to be paid by the state as a part of the state printing. Within a specified time before any election at which measures are to be voted upon, the secretary of state is required to transmit copies of each measure together with the arguments submitted, to the voters within the state.

See *Stevens v. Benson*, 1907, 91 P. 577.

*South Dakota.* Const. (Amend., 1898) art. 3, sec. 1. Under this amendment the people expressly reserve the right to propose measures which the legislature is required to enact and to submit to a vote of the electors. They also reserve the right to require a referendum on any law which the legislature may have enacted, except laws necessary for the immediate preservation of the public peace, health, or safety, and laws for the support of the state government and its existing public institutions.

Not more than 5% of the qualified voters are required to invoke either the initiative or the referendum.

Pol. Code, 1903, secs. 21-7. Initiative petitions must contain the substance of the law desired. Referendum petitions must describe the law to be submitted by setting forth the title together with the date of passage and approval; such petitions must be filed within

ninety days after the adjournment of the legislature. Initiative or referendum measures approved by a majority of the votes cast thereon become law and are to be in force immediately after the result has been officially determined. (Laws, 1899, c. 93.)

The legislature having declared that the provisions of an act are necessary for the immediate preservation and support of the existing public institutions of the State, that declaration is conclusive upon this court. Such an act is clearly not within the referendum clause of sec. 1 as amended, of art. 3 of the constitution. *State ex rel. Lavin et al. v. Bacon et al.* 1901, 14 South Dakota, 394.

*Texas.* Laws, 1905, c. 11, sec. 140. Under the primary election law, 10% of the voters in any political party may propose policies and candidates and secure a direct party vote thereon. Petitions are to be filed with the chairman of the county or precinct executive committee at least five days before the tickets are to be printed and the chairman may require a sworn statement that the names of the applicants are genuine.

The number of signatures required for a petition is to be determined by the votes cast for the party nominee for governor at the preceding election. It is the duty of the chairman to submit any proposition for which a petition is filed, and the delegates selected at that time are to be considered instructed for whichever proposition a majority of the votes is cast. Provision is also made that all additional expense of printing any proposition on the official primary ballot is to be paid for by the parties requesting the same.

*Utah* Const. (Amend. 1900) art. 6, secs 1 and 22. This amendment provides for direct legislation, but the amendment is not self executing and three successive legislatures have refused to put it in force.

## SUMMARY

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The leading provisions relating to direct state legislation may be summarized under the scope of direct legislation, limitations on the re-submission of measures, procedure for initiative petitions, procedure for reference of measures, enactment of referred measures, and penalties.

### SCOPE OF DIRECT LEGISLATION.

In the United States direct legislation has been applied to constitutional and to statutory law; it has also been employed to obtain expressions of public opinion on state affairs, and to secure instructions as to party policy within the political parties.

#### **Constitutional law**

The constitutional amendments for direct legislation in state affairs apply generally to constitutional law.

*Exceptions.* Some of the states exempt constitutional amendments from the operation of the initiative.

See Mont. Const. (Amend. 1906) art. 5, sec. 1; Me. (Proposed Const. Amend.) Resolves, 1907, c. 121.

#### **Statutory law**

As regards statutory law, most of the amendments provide for specific exceptions to the use of direct legislation and also provide for emergency measures.

*Exceptions.* The specific exceptions generally relate to appropriations for the current expenses of the state government, for the maintenance of the state institutions, and for the support of the public schools.

Compare the provisions of Me., Mo., Mont. and S. D.

*Emergency measures.* Laws necessary for the immediate preservation of the public peace, health, or safety, are generally exempt from the operation of the referendum.

See Me. (Proposed Const. Amend.) Resolves, 1907, c. 121; Mo. (Proposed Const. Amend.) Laws, 1907, p. 452-3; Mont. Const. (Amend. 1906) art. 5, sec. 1; N. D. (Proposed Const. Amend.) Laws, 1907, p. 451-3; Okla. Const. 1907, art. 5, sec. 2; Ore. Const. (Amend. 1902) art. 4, sec. 1; S. D. Const. (Amend. 1898) art. 3, sec. 1.

A safeguard against the undue use of emergency measures is provided in a number of cases by requiring the declaration of the emergency and a separate roll call and vote on the question of the emergency. A two-thirds majority, on an aye and nay vote, of all the members elected to each house is also sometimes required for the passage of emergency bills.

Compare the provisions of Me. and N. D.

A further safeguard against the abuse of the emergency clause by the legislature is secured by an enumeration of laws which may not be enacted as emergency measures.

Thus, the proposed amendment for Maine provides that an emergency bill shall not include (1) the infringement of the right of home rule for municipalities; (2) a franchise or a license to a corporation or an individual to extend longer than one year; or (3) provision for the sale or purchase or renting for more than five years of real estate.

The courts have uniformly held that the question as to whether a law is necessary for the immediate preservation of the public peace, health, or safety, is for the legislature and is not subject to judicial review.

See *State v. Bacon*, 1901, 14 S. D., 394; and *Kadderly v. Portland*, 1903, 44 Ore., 118.

### **Public opinion**

*Public opinion system.* Under public opinion laws pressure may be brought to bear upon legislators in the enactment of law.

See Ill. Laws, 1901, p. 198.

*Advisory system.* The advisory system goes farther in the same direction and instructs representatives as to legislative action.

### **Party policy**

*Advisory system within the parties.* The use of the advisory system within the parties at primary elections enables the voters in any political party to propose policies and candidates and secure a direct party vote thereon.

See Tex. Laws, 1905, c. 11, sec. 140.

### **LIMITATIONS ON THE RESUBMISSION OF MEASURES**

The possible abuse of direct legislation through a frequent resubmission of defeated propositions, is provided against in a number of states.

N. D. (Proposed Const. Amend. 1907) provides that the same constitutional amendment shall not be proposed oftener than once in ten years.

In Okla. Const. 1907, art. 5, sec. 6, any measure rejected by the people cannot be again proposed by the initiative within three years by less than 25% of the legal voters.



## PROCEDURE FOR INITIATIVE PETITIONS

The procedure for initiative measures varies in the several states. Differences exist in the requirements for publicity, the completion of the petition, the transmission of measures to the legislature, the provision for competing bills, and the reference of initiative and of conflicting measures.

**Publicity**

Publicity is secured through the publication of the text of initiative measures and the distribution of arguments for and against proposed bills.

*Publication of text of measure.* Most of the states require the publication of the full text of initiative and referendum measures.

Compare the provisions for Me., Mo., Mont., N. D., Okla., Ore., and S. D.

*Distribution of arguments.* Certain states also make provision for the distribution of arguments.

For elaborate provisions for the distribution of arguments for and against proposed measures, see Mont. Laws, 1907, c. 62, and Ore. Laws, 1907, c. 226.

**Completion of petition**

The percentage of voters required to sign petitions, the basis of the percentage, the verification of signatures, and the method of filing petitions, vary considerably with the different states.

*Percentage of voters.* The percentage ranges from 5% to 15%.

The percentages for the different states are as follows: 8 per cent for Mo., Mont., N. D., Okla., and Ore.; and 5 per cent for S. D. In Mo. the 8 per cent is required only from each of at least two-thirds of the congressional districts, while in Mont. at least two-fifths of the whole number of counties must each furnish 8 per cent toward

making up the required 8 per cent for the entire state. Okla. requires 15 per cent to propose constitutional amendments. Instead of requiring a certain percentage, Me. requires a fixed number of 12,000 signatures for initiative measures.

*Basis of percentage.* The percentage required is uniformly based upon the vote cast at the last preceding general election.

In S. D. and Mont. the per cent is based on the vote for governor; in Ore., Mo., and N. D., on the vote for justices of the supreme court; and in Okla. on the vote for the state office receiving the highest number of votes.

*Verification of signatures.* The methods for verifying signatures are definitely prescribed in the laws enacted to facilitate the operation of the several amendments.

See S. D. Laws, 1899, c. 93; Ore. Laws, 1907, c. 226; and Mont. Laws, 1907, c. 62.

*Filing.* Provision is generally made that initiative petitions be filed with the secretary of state. The time for filing varies according to whether the petition is to be presented to the legislature, or is to be voted upon by the people without legislative consideration.

*Time.* The time for filing is not less than four months before the election in Ore., Mont., and Mo.; not less than thirty days before any regular session in N. D.; and at least thirty days before the close of the session in Me.

### **Transmission of measures to legislature**

The requirement that all proposed measures be transmitted to the legislature gives opportunity for public hearings, for testimony, for debate, and for deliberative consideration.

Compare the provisions of Me. (Proposed Const. Amend.) Laws, 1907, c. 121, and of N. D. (Proposed Const. Amend.) Laws, 1907, p. 451-3.

*Precedence of initiative measures.* Provision is sometimes made that initiative measures take precedence over all other measures in the legislature except appropriation bills.

See the proposed amendment for N. D.

*Limitations on legislative action.* The provision that the legislature must enact the measure submitted is a restriction found in only one of the states.

S. D. Const. (Amend. 1898) art. 3, sec. 1.

N. D. requires that the legislature enact or reject the proposed measure within forty days.

### **Provision for competing bills**

An important feature in several states is the provision that the legislature may submit a competing bill if it disapproves of the initiative measure. This affords opportunity for deliberative consideration of conflicting measures, and to some extent protects the people against the bills of extremists.

### **Reference of initiative measures and of competing bills**

Competing bills are to be submitted with initiative measures so that the electors may choose between them or reject both.

See Me. (Proposed Const. Amend.) Resolves, 1907. c. 121, and N. D. (Proposed Const. Amend.) Laws, 1907, p. 451-3.

#### PROCEDURE FOR REFERENCE OF MEASURES

Measures may be referred either by petition or by legislative action.

### **Reference by petition**

The requirements for reference by petition vary both

as to the percentage of voters required and the manner of filing petitions.

*Percentage of voters.* The required percentage ranges from 5% to 10%.

The percentages are 5 per cent for Mo., Mont., N. D., Okla., Ore., and S. D., while Nev. requires 10 per cent. The requirements for two-thirds of the congressional districts in Mo., and for two-fifths of the counties in Mont. holds for referendum as well as for initiative petitions. Me. requires a fixed number of 10,000 signatures.

Mont. has a provision that any measure referred to the people is to remain in full force unless the petition is signed by 15 per cent of the legal voters of a majority of the whole number of counties in the state, in which case the law remains inoperative until it is passed upon at an election and the result is officially determined.

*Basis of percentage.* The basis of the required percentage is the same as for initiative petitions.

*Filing.* Petitions are to be filed with the secretary of state within a specified time.

*Time.* The time for filing is not less than ninety days after the legislative session in S. D., Ore., Okla., Mo., Me., and N. D.; and not later than six months after the session in Mont.

### **Reference by legislative action**

The legislature may enact measures expressly conditioned upon the people's ratification by referendum vote.

Compare the constitutional provisions of Ore., Mont., and Okla., and the proposed amendments for Me., Mo., and N. D.

*Vote required.* Montana requires a majority vote of the members elect to refer an act of the legislative assembly.

### **Duty of officials**

In submitting initiative and referendum petitions to a vote of the people, the secretary of state and all other officers are to be guided by the general laws un-

til legislation is especially provided.

Compare the provisions for Me., Mo., Mont., N. D., and Ore.

#### ENACTMENT OF REFERRED MEASURES

### **Elections for submission of measures**

Measures may be referred for enactment or rejection at general or at special elections.

*General Elections.* S. D. provides for submission of measures only at general elections.

*Special elections.* Provision is made for special elections to be ordered, by the legislature in Mo., Mont. and Ore.; by law in N. D.; and by the legislature or the governor in Okla. and Me. Under the Me. provision the governor must order a special election, if so requested in the petition.

### **Veto power**

The veto power of the governor does not extend to measures referred to the people.

See S. D., Ore., Mont., Okla., Me., Mo., and N. D.

The proposed amendment for Me. requires that if any measure initiated by the people and passed by the legislature without change, is vetoed by the governor, and if his veto is sustained by the legislature, the measure must be referred to the people at the next general election.

### **When operative**

The provisions for the several states generally require that any measure referred to a vote of the people is to become law and be in force from the date of the official declaration that it has been approved by a majority of the votes cast thereon.

In Okla. initiative measures must be approved by a majority of the votes cast at the election.

In Me. provision is made that initiative measures enacted by the legislature without change, are not to be referred unless a referendum vote is demanded. When initiative and competing bills are submitted at the same election, and neither receives a majority of the votes given for and against both, the one receiving the most

votes is to be resubmitted by itself; but no measure is to be resubmitted unless it received more than one-third of the votes.

Under the N. D. provision, if conflicting measures submitted at the same election are both approved by a majority severally cast for and against each, the one receiving the highest number of affirmative votes is enacted.

#### PENALTIES

The laws enacted to facilitate the operation of the direct legislation amendments provide penalties for the unlawful signing of petitions.

In S. D., Ore., and Mont., the unlawful signing of initiative or referendum petitions is punishable by fine, or by imprisonment, or both, in the discretion of the court. In S. D. (Laws, 1899, c. 93) the fine is not to exceed \$500.00 nor the imprisonment five years. In Ore. (Laws, 1907, c. 226) and in Mont. (Laws, 1907, c. 62) the fine is fixed at the same limit and the imprisonment is not to exceed two years.







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# THE RECALL

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MARGARET A. SCHAFFNER

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MADISON, WISCONSIN,  
DECEMBER, 1907



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## METHODS OF ENACTMENT

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The right of recall is the power to remove an official at an election held upon petition of a specified percentage of the qualified electors.<sup>1</sup>

If the incumbent is sustained at the removal election, he continues to hold office.

The enactment of provisions for the recall of officials has been secured through state and through municipal legislation.

### **Municipal legislation<sup>2</sup>**

*Freeholders' charters.* The recall has been adopted in a number of cities in California and Washington under the general constitutional and legislative provisions for the framing of freeholders' charters by means of an elected board of freeholders.

For municipal charters which incorporate a recall provision, see San Bernardino, Cal. Laws, 1905, p. 960-1; Santa Monica, Cal. Laws, 1907, p. 1047-8; Alameda, Cal. Laws, 1907, p. 1101-3; Long Beach, Cal. 1907, p. 1230-33; Riverside, Cal. Laws, 1907, p. 1345-7; and Everett, Wash., Charter adopted Nov. 26, 1907.

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<sup>1</sup> Compare the provisions for Los Angeles, Cal. Laws, 1903, p. 574-5; Seattle, Charter Amendment adopted March 6, 1906; Lewiston, Id. Laws, 1907, p. 358-60; Des Moines, Ia. Laws, 1907, c. 48, sec. 18; and Fort Worth, Tex. Special Laws, 1907, p. 130-1.

<sup>2</sup> In California, charters framed by boards of freeholders and charter amendments secured through direct initiative petitions must be ratified by the legislature after being adopted by the people, but the legislature has uniformly ratified such charter provisions. In Washington, freeholders' charters and charter amendments need not be referred to the legislature.

*Freeholders' charter amendments.* In a number of cities the recall has been secured as an amendment to freeholders' charters through direct initiative petitions.

The recall has been established as a charter amendment in Los Angeles, Cal. Laws, 1903, p. 574-5; San Diego, Cal. Laws, 1905, p. 922-3; Pasadena, Cal. Laws, 1905, p. 1022-3; Fresno, Cal. Laws, 1905, p. 1057-9; Seattle, Wash., Charter Amendment adopted March 6, 1906; and San Francisco, Cal., Charter Amendment adopted Nov. 5, 1907.

### **State legislation**

*General.* A number of states have provided for the recall through general legislation.

For recall provisions established through general law, compare the legislation of Ia. Laws, 1907, c. 48, sec. 18; S. D. Laws, 1907, c. 86; and Wash. Laws, 1907, c. 241, sec. 15.

*Special.* Municipal charters and charter amendments incorporating the recall have also been granted through special legislation.

Compare the charter provisions of Lewiston, Id. Laws, 1907, p. 358-60; Fort Worth, Tex. Special Laws, 1907, p. 130-1; Denison, Tex. Special Laws, 1907, p. 361-6; and Dallas, Tex. Special Laws, 1907, p. 621-2.



## LAWS AND JUDICIAL DECISIONS

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Laws relating to the recall are of recent date in the United States. However, the principle underlying the institution was recognized in America before the adoption of the constitution, when the delegates to the Continental Congress from Pennsylvania were recalled because they refused to sign the Declaration of Independence and other delegates were sent in their stead.

In Switzerland the right to recall officials seems to have been exercised in some of the Cantons from their earliest development of representative government, and although the right is not frequently exercised at the present time, the recall is a recognized institution in local government in about one-third of the Swiss Cantons.

A significant recognition of the principle is found in the development of representative government in England, for after all, the recall is not unlike the British system by which Parliament is dissolved, when the members go back to the people and a new Parliament is elected.

### **Foreign countries**

*Switzerland.* The recall exists in a number of Cantons in Switzerland. Typical provisions may be found in the laws of Aargau, Basel-Landschaft, Berne, and Schaffhausen.

Aargau. Cantonal Constitution, 1885, art. 29. When 5,000 qualified electors request the recall of the Great Council in lawful manner, the Executive Council must put the demand of the people to vote. If the majority of the qualified electors declare themselves for the recall, the Great Council must be entirely renewed. The newly elected Great Council is to complete the term of the one which was recalled.

Basel-Landschaft. Cantonal Constitution, 1892, art. 29. The recall of officials may take place only in the legally prescribed forms.

Berne. Law of February 20, 1851. Provides the procedure for the recall of officials.

Also see the provisions of the Cantonal Constitution, 1893, art. 16, and of the Law of October 29, 1899, sec. 3.

Schaffhausen. Law of October 1, 1904, art. 67-9 and art. 80-2. All demands for carrying out the popular right of recall must be presented to the Executive Council in the form of written petitions, signed by at least 1,000 qualified voters of the Canton.

### **United States**

*California.* The recall has been adopted by a number of cities having the right to adopt freeholders' charters and charter amendments.

Const. 1879, art. 11, sec. 8 (amended 1906). Under this section any city having a population of 3,500 or more, may adopt a freeholders' charter subject to the approval of the legislature. An amendment to the charter must be submitted to the people on petition of 15% of the electors, and if adopted, must be submitted to the legislature for approval or rejection.

Const. 1879, art. 20, sec. 16 (amended 1906). "In the case of any officer or employee of any municipality governed under a legally adopted charter, the provisions of such charter with reference to the tenure of office or the dismissal from office of any such officer or employee shall control."

Los Angeles. Charter Amendment,<sup>3</sup> Cal. Laws, 1903, p. 574-5. The holder of any elective office may be removed at any time by the electors qualified to vote for a successor of the incumbent. The procedure to effect the removal is as follows: The petition demanding an election of a successor of the person sought to be removed must be signed by 25% of the qualified electors, must contain a general statement of the grounds for which the removal is sought, and must be filed with the city clerk. The required percentage of signers is to be based upon the entire vote cast at the last preceding general municipal election for all candidates for the office the incumbent of which is sought to be removed. The signatures to the petition need not all be appended to one paper, but each signer must add to his signature his place of residence, giving the street and number. One of the signers of each paper is required to make oath before an officer competent to administer oaths, that the statements therein made are true, and that the signatures are genuine. Within ten days from the date of filing the

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<sup>3</sup>The Los Angeles amendment is so like the Cantons' law of Schaffhausen, Switzerland, that it seems to have been modelled after the system developed in that Canton. The recall law enacted in Schaffhausen Nov. 16, 1878, was replaced by a new revision of Oct. 1, 1904.

petition the city clerk must examine the great register and ascertain whether or not the petition is signed by the requisite number of qualified electors. If necessary, the council must allow him extra help for that purpose. The city clerk must attach his certificate to the petition showing the result of the examination. If the petition is shown to be insufficient, it may be amended within ten days. Within ten days after amendment the clerk must make like examination of the amended petition, and if it is still insufficient, it is to be returned to the person filing the same, without prejudice, however, to the filing of a new petition to the same effect. If the petition is shown to be sufficient, the clerk must submit the same to the council without delay. If the petition is found to be sufficient, the city council must order and fix a date for holding the election, not less than thirty days nor more than forty days from the date of the clerk's certificate to the council that a sufficient petition is filed. The city council is required to provide for publication of notice, and all arrangements for holding the election; and the same is to be conducted and returned in all respects as other city elections. The successor of any officer so removed is to hold office during the unexpired term of his predecessor. Any person sought to be removed may be a candidate to succeed himself, and, unless he requests otherwise in writing, the clerk is required to place his name on the official ballot without nomination. In any removal election the candidate receiving the highest number of votes is to be declared elected. Unless the incumbent receives the

highest number of votes, he is deemed to be removed from the office upon qualification of his successor. In case the party who receives the highest number of votes fails to qualify within ten days after receiving notification of election, the office is to be deemed vacant.

The names of the petitioners must be on the great register and ascertained by the clerk to be there, otherwise they are not qualified signers of the petition. Affidavits of registration are not a part of the great register. *Davenport v. City of Los Angeles*, et al., 1905, 146 Cal. 508.

San Diego. Charter Amendment, Cal. Laws, 1905, p. 922-3. The procedure for removal is similar to that of Los Angeles.

The act of the city council in accepting the petition for the recall of a councilman is merely ministerial. When a petition bears the proper number of names of electors, as shown by the clerk's certificate, no discretion remains with the council, but it is its duty to call an election. *Good v. Common Council of the City of San Diego*, 1907, 90 P. 44.

San Bernardino. Charter, Cal. Laws, 1905, p. 960-1. The procedure is similar to that of Los Angeles, except that the percentage is at least 30%.

Pasadena. Charter Amendment, Cal. Laws, 1905, p. 1022-3. The procedure for removal is similar to that of Los Angeles.

Fresno. Charter Amendment, Cal. Laws, 1905, p. 1057-9. The procedure is similar to that of Los Angeles, except that the percentage is at least 51%.

Santa Monica. Charter, Cal. Laws, 1907, p. 1047-8. The procedure is similar to that of Los Angeles, except that the percentage is at least 40%.

Alameda. Charter, Cal. Laws, 1907, p. 1101-3. The recall applies to appointive as well as elective of-

ficers. The percentage is based on the number of votes cast for mayor at the last preceding general municipal election. Otherwise the procedure is similar to that of Los Angeles.

Long Beach. Charter, Cal. Laws, 1907, p. 1230-33. The procedure is similar to that of Los Angeles, except that the percentage is at least 40%.

Vallejo. Charter Amendment, Cal. Laws, 1907, p. 1253-4. The procedure is similar to that of Los Angeles.

Riverside. Charter, Cal. Laws, 1907, p. 1345-7. The procedure for removal is similar to that of Los Angeles.

San Francisco. Charter Amendment, adopted Nov. 5, 1907. The procedure for removal is similar to that of Los Angeles, except that the percentage is at least 30%.

*Idaho.* The recall has been established through special legislation providing a municipal charter amendment for Lewiston.

Lewiston. Charter Amendment, Id. Laws, 1907, p. 358-60. The procedure for removal is similar to that of Los Angeles, with the following modifications: The cost for extra help for the examination of the petition is to be paid by the petitioners, who are required to deposit the sum necessary with the city clerk at the time of filing the petition. The amount is not to exceed \$100.00 and any surplus is to be returned to the persons by whom the money is deposited. No petition for removal may be filed until the person sought to be removed shall have been in office at least

ninety days, and no person may be required to stand for reelection more than once during the term for which he was elected.

*Iowa.* Laws, 1907, c. 48, sec. 18. The recall is provided for in the commission plan of municipal government established by general law. The commission system may be adopted by cities having a population of or exceeding 25,000 inhabitants. The procedure for the removal of elective officials is similar to that of Los Angeles, except that the percentage of qualified electors required to sign the petition is based on the number of votes cast for all candidates for the office of mayor at the last preceding general municipal election.

Des Moines adopted the commission plan of government, including the recall provision, at a special election held June 20, 1907.

*South Dakota.* Laws, 1907, c. 86. The recall is a provision of the commission form of municipal government established by general law. The commission system may be adopted by cities of the first, second, or third class, or by those having special charters.

The procedure for removal is similar to that of Los Angeles, except that the percentage required is 15%. The recall applies to directors of the board of education as well as to commissioners.

*Texas.* The recall is provided for in a number of municipal charters granted by special legislation.

*Fort Worth.* Charter, Tex. Special Laws, 1907, p. 130-1. The procedure is similar to that of Los Angeles, except that the petition for removal must be

signed by a least 20% of the qualified electors of the city. Since the municipal officers are elected at large under the commission system of government prevailing in Fort Worth, the required percentage is based upon the entire electorate of the city.

Denison. Charter, Tex. Special Laws, 1907, p. 361-2, and 366. Provision is made for the recall of the mayor and of the councilmen. The petition for removal must be signed by 20% of the qualified voters of the city. Within twenty days from the date of receiving the petition, the city council must call an election, which is to be conducted and the returns made the same as for other city elections. The incumbent is to be a candidate for reelection. The newly elected officer is to qualify for the office as provided by law.

Dallas. Charter, Tex. Special Laws, 1907, p. 621-2. The procedure for removal is similar to that of Los Angeles, except that the percentage required is 35%; and since the municipal officers are elected at large, this percentage is based on the entire vote cast for candidates for the office of mayor on the final ballot at the last preceding general municipal election. A majority of all votes cast at the election is necessary to elect. In case no candidate receives a majority at the first election, a second election must be held.

*Washington.* The recall has been adopted by a number of cities having the right to adopt freeholders' charters and charter amendments.

Const. 1889, art. 11, sec. 10. Under this section freeholders' charters may be adopted by cities having



a population of 20,000 or more. Such charters become the organic law of the city when adopted by the municipal electorate and need not be referred to the legislature for enactment.

Laws, 1903, c. 186. Any municipality having adopted a charter under the laws of the state, may adopt direct amendments to the city charter in respect to local affairs. Any petition for a proposed amendment must be signed by 15% of the qualified voters. The required percentage is to be based on the total number of votes cast at the last preceding general municipal election. The petition must be filed with the city clerk thirty days or more before the election at which it is to be voted upon. If approved by a majority of the local electors voting upon it, the amendment becomes part of the charter organic law governing the municipality.

The Seattle charter amendment for the recall was adopted under this law.

Seattle. Charter Amendment, adopted Mar. 6, 1906. This recall provision is in the form of an amendment to that part of the city charter which relates to the term of office of elective officials. The procedure for removal is similar to that of Los Angeles, except that any person competent to make affidavit may circulate petitions.

Everett. Charter, adopted Nov. 26, 1907. This charter incorporates a recall provision similar to that of Seattle.

The recall has also been provided for cities of the second class through general legislation.

Laws, 1907, c. 241, sec. 15. The law for the government of cities of the second class incorporates the following provisions for the recall of councilmen: Whenever three-fifths of all the qualified electors of any ward, as shown by the last general municipal election returns, shall petition for the recall of their councilman, the city council is required to call a special election in the ward to elect a councilman to take the place of the incumbent. Thereupon such election must be held. Should the councilman whose recall is petitioned for be defeated, he is required to vacate his office for the balance of the term in favor of the successful candidate. The petition for recall of councilmen must be signed only in the office of the city clerk, where the petition must be kept on file for that purpose, and all signatures must be appended within an interval of ten days.

## SALIENT FEATURES

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The provisions for the recall are very similar for the different cities whether secured through municipal or through state legislation.

### **Scope of recall**

*Elective officials.* Usually the law provides for the removal of elective officials.

For typical provisions for the removal of any elective officer, compare Los Angeles, Cal. Laws, 1903, p. 574-5; San Diego, Cal. Laws, 1905, p. 922-3; San Bernardino, Cal. Laws, 1905, p. 960-1; Pasadena, Cal. Laws, 1905, p. 1022-3; Fresno, Cal. Laws, 1905, p. 1057-9; Santa Monica, Cal. Laws, 1907, p. 1047-8; Long Beach, Cal. Laws, 1907, p. 1230-33; Riverside, Cal. Laws 1907, p. 1345-7; Seattle, Charter Amendment adopted March 6, 1906; Lewiston, Id. Laws, 1907, p. 358-60; Fort Worth, Tex. Special Laws, 1907, p. 130-1; Dallas, Tex. Special Laws, 1907, p. 621-2.

Also compare the general provisions for Ia. Laws, 1907, c. 48; and S. D. Laws, 1907, c. 86.

The charter provision for Denison, Tex. Special Laws, 1907, p. 361-6, specifically mentions the mayor and the councilmen as subject to the recall, while Wash. Laws, 1907, c. 241, sec. 15, provides for the recall of councilmen only.

The S. D. provision, Laws, 1907, c. 86, specifically includes directors of boards of education.

In cities where the recall is established under the commission form of government, provision is generally made for the removal of the commissioners and other elective officials. For typical cases, compare the provisions for Ia. Laws, 1907, c. 48, sec. 18; and S. D. Laws, 1907, c. 86.

*Appointive officials.* In certain cases the law also applies to the holder of any appointive office.

See Cal. Laws, 1907, p. 1101-3, for the charter provision of Alameda.

## **Prohibition of repeated recalls**

The possible misuse of the recall is provided against by the requirement that no petition for removal be filed until the person sought to be removed has been in office for a stated period, and that no person be required to stand for reelection more than once during the term for which he was elected.

See *Id. Laws*, 1907, p. 358-60.

## **Procedure for petition**

*Contents of petition.* It is generally the rule that the petition must include a demand for removal and must set forth the grounds for which the removal is sought.

For typical cases, compare the provisions for Los Angeles,, Seattle, Des Moines, and Fort Worth.

*Qualifications of signers.* Any elector qualified to vote for a successor of the incumbent may sign removal petitions.

See *Davenport v. City of Los Angeles, et al.*, 1905, 146 Cal. 508.

*Percentage of voters.* The percentage of voters required to sign petitions ranges from 15% to 60%.

The percentages are 15% for S. D. *Laws*, 1907, c. 86; 20% for Denison and Fort Worth; 25% for Los Angeles, Alameda, Pasadena, San Diego, Riverside, Vallejo, Seattle, Lewiston, and Des Moines (*Id. Laws*, 1907, c. 48, sec. 18); 30% for San Bernardino and San Francisco; 35% for Dallas; 40% for Long Beach and Santa Monica; 51% for Fresno; and 60% for second class cities of Wash. (*Laws*, 1907, c. 241, sec. 15).

*Basis of percentage.* The required percentage of signers is usually based upon the entire vote cast at the last preceding general municipal election for all

candidates for the office the incumbent of which is sought to be removed.

In cities in which municipal officers are elected at large, the percentage is frequently based upon the vote cast for all candidates for the office of mayor. Compare the provisions for Ia. Laws, 1907, c. 48, sec. 18; for S. D. Laws, 1907, c. 86; and for Fort Worth, Denison, and Dallas, Tex. Special Laws, p. 130-1; 361-2, 366; and 621-2.

*Verification of signatures.* Generally the signatures to the petition need not all be appended to one paper, but each signer is required to add to his signature his place of residence, giving the street and number. Each paper must be certified to by an affidavit to the effect that the statements therein made are true and that the signatures are genuine.

For different requirements for the verification of signatures, see the provisions for Los Angeles, Cal. Laws, 1903, p. 574-5; Seattle Charter Amendment, adopted, March 6, 1906; and Lewiston, Id. Laws, 1907, p. 358-60.

*Filing.* Provision is generally made for the filing of the petition with some designated officer, usually the city clerk.

*Examination.* Within a prescribed time the proper officer is required to examine the petition to ascertain whether it is signed by the requisite number of qualified electors.

*Time.* The time limit is usually fixed within ten days.

*Assistance.* Extra help must be allowed if necessary for the examination of the petition. Generally the extra expense is paid by the city. Under the Idaho law, 1907, p. 358-60, the cost for extra help must be paid by the petitioners.

*Certificate of result.* The city clerk or other designated official must attach his certificate to the petition showing the result of the examination.

*Amendment of petition.* If the petition is shown to be insufficient it may be amended. After amend-

ment, the clerk is required to examine the amended petition, and if it is still insufficient, it is to be returned to the person filing the same, without prejudice, however, to the filing of a new petition to the same effect.

For typical cases, compare the provisions of Los Angeles, Seattle, Lewiston, Des Moines, and Fort Worth.

Also compare the provisions of Schaffhausen (Switzerland), Law of October 1, 1904.

*Transmission of petition to council.* If the petition is shown to be sufficient, it must be transmitted to the council without delay.

This provision of the Los Angeles charter has been generally followed.

### **Removal election**

If the petition is sufficient, the municipal council is required to order an election.

See *Good v. Common Council of the City of San Diego*, 1907, 90 P. 44.

*Time.* Generally the date for holding the election is to be fixed by the council within a specified time from the date of the certificate that a sufficient petition is filed.

Usually the time limit is fixed at not less than thirty nor more than forty days.

*Candidates.* The person sought to be removed may be a candidate to succeed himself, and, unless he requests otherwise in writing, his name must be placed on the official ballot without nomination.

For typical cases, compare Los Angeles, Seattle, Lewiston, Des Moines, and Fort Worth.

*Manner of conducting election.* Recall elections are conducted, returned, and the results thereof declared, in all respects as are other city elections.

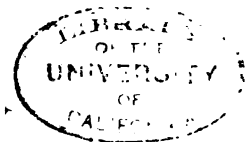
**Tenure of office**

*Removal of incumbent.* Unless the incumbent receives the highest number of votes, he is deemed to be removed from office upon the qualification of his successor.

*Term of successor.* The successor of any officer removed through the recall is to hold office during the unexpired term of his predecessor.

Compare the provisions in Aargau, Cantonal Const. 1885, art. 29, and in Schaffhausen, Law of October 1, 1904. Similar provisions are found in Berne, Law of February 20, 1851.

*Vacancy of office.* In case the party who receives the highest number of votes fails to qualify within a prescribed time after receiving notice of election, the office is deemed vacant, and is to be filled in accordance with the general law for filling vacancies.













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